

843
No. 15583

United States
Court of Appeals
for the Ninth Circuit

*See Vol.
3044*

ALEX E. WILSON,

Appellant,

VS.

FRED G. STEVENOT, Trustee of Coastal Ply-
wood & Timber Co., debtor, Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Northern Division

FILED

AUG - 9 1957

PAUL P O'BRIEN, CLERK



No. 15583

United States
Court of Appeals
for the Ninth Circuit

ALEX E. WILSON,

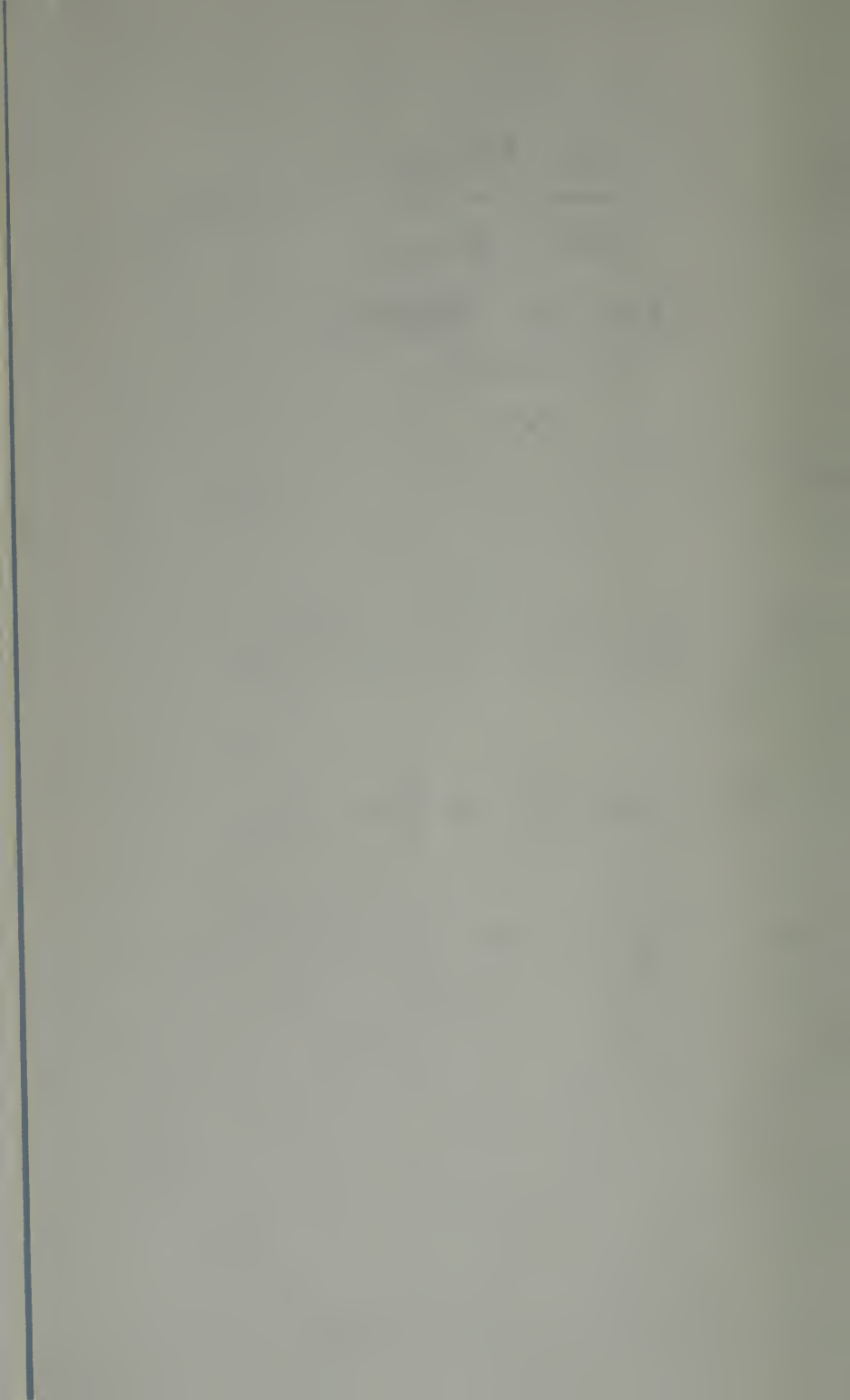
Appellant,

vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States District Court, Northern
District of California, Northern Division

No. 12223

In the Matter of
COASTAL PLYWOOD & TIMBER COMPANY,
a corporation, Debtor.

In Proceedings for the Reorganization of a Corporation

PETITION OF TRUSTEE FOR AUTHORITY
TO SELL CONTRACTS OF THE DEBTOR

To the Honorable Dal M. Lemmon, Judge of the
District Court of the United States for the
Northern District of California, Northern Division:

The Petition of Fred G. Stevenot as Trustee
herein respectfully shows that:

1. Your petitioner is the duly appointed, qualified and acting Trustee of the Estate of Coastal Plywood & Timber Company, a corporation, Debtor in the above entitled cause.

2. The Order appointing your petitioner Trustee of the Debtor herein, among other things, authorizes and directs your petitioner, as such Trustee, to conduct and operate the business of the Debtor and to manage, maintain and keep in proper condition

and repair the assets, properties and business of the Debtor until further order of the Court.

3. Among the assets of the Debtor are the following described contracts:

(a) Agreement dated September 4, 1946, by and between Rankin P. Rickard, Marjorie Rickard, Wesley P. Rickard, Vina M. Rickard, Wesley L. Rickard and Grace H. Rickard, as Sellers, and H. C. Crofoot, Trustee for Coastal Plywood Corp., as Buyer, together with two supplements thereto.

(b) Agreement dated September 4, 1946, by and between Stanley E. and Delia Brush, as Sellers, and H. C. Crofoot, Trustee for Coastal Plywood Corp. as Buyer, together with three supplements thereto,

(c) Agreement dated September 4, 1946, by and between Pauline Brush, as Seller, and H. C. Crofoot, Trustee for Coastal Plywood Corp., as Buyer, together with two supplements thereto.

(d) Agreement dated September 5, 1946, by and between George E. Rimmel, as Seller, and H. C. Crofoot, Trustee for Coastal Plywood Corp., as Buyer, with three supplements thereto.

By each of said contracts described in subparagraphs (a) and (d) above, the Sellers therein named sold to the Buyer the merchantable redwood, fir and sugar pine standing and growing upon certain described real properties situated in the County of Mendocino, State of California, for a purchase price to be computed at the rate of Two Dollars (\$2) per

thousand feet of such timber. Each of said contracts provides that any timber not removed within ten years from the date of execution thereof shall revert to and become the property of the respective Sellers.

By each of said contracts described in subparagraphs (b) and (c) above, the Sellers therein named agreed to sell to the Buyer certain described parcels of real properties situated in the County of Mendocino, State of California, for a purchase price to be computed at the rate of Two Dollars (\$2) per thousand feet of merchantable redwood, fir and sugar pine growing thereon.

Said contracts described in subparagraphs (a) and (d) require the Buyer to pay all taxes levied and assessed against the growing timber for a period of ten years, and said contracts described in subparagraphs (b) and (c) require the Buyer to pay all taxes levied or assessed against the property therein agreed to be conveyed which may be due and payable from and after the date thereof. The contracts described in subparagraphs (b) and (d), as supplemented, also provide for annual payments to the Sellers of \$1000 and \$500, respectively, commencing September 4, 1948 and continuing until logging operations are commenced.

By an Assignment dated December 6, 1946, H. C. Crofoot, the Buyer named in the original agreements, assigned all of his right, title and interest in and to said agreements to Coastal Plywood Cor-

poration, which thereafter was merged with and into the Debtor.

4. At the time of the execution of the original agreements, Coastal Plywood Corporation paid an aggregate of \$30,040 on the purchase prices provided for therein. In addition, the Debtor has made annual payments to the Sellers named in the contracts described in subparagraphs (b) and (d) of paragraph 3 aggregating \$7500, and Coastal Plywood Corporation and the Debtor have paid property taxes as required by said agreements.

5. Your petitioner is of the opinion, as such Trustee, that the above described contracts should be sold, if a reasonable price can be obtained therefor, for the following reasons:

(a) Each of said contracts described in subparagraphs (a) and (d) of paragraph 3 provide that any timber not removed within ten years from the date thereof shall revert to the Sellers. In this connection, the contract described in said subparagraph (a) involves substantially more timber than the other three contracts combined. In view of the problems hereinafter noted and in view of the Debtor's financial condition, your petitioner is of the opinion, as such Trustee, that there is serious doubt that the Debtor will be able to remove such timber prior to the expiration of such contracts in 1956.

(b) The timber conveyed, or growing on land agreed to be conveyed in said contracts, can be

economically removed to the Debtor's mill only over a parcel of land known as the "Y-Ranch." A question has been raised as to the right of the Debtor to remove timber over said land and also as to the interpretation of the Debtor's duties under said contracts, the resolution of which could involve protracted litigation.

(c) The proceeds of a sale of said contracts would provide funds needed in the current operations of the Debtor.

6. During the past few months, your petitioner, as Trustee, has endeavored to find a purchaser for said contracts. On August 19, 1952, your petitioner received from Clarence L. Nielson of Santa Cruz, California, an offer to purchase said contracts for the sum of \$100,000, conditional upon the ability of said Clarence L. Nielson to successfully negotiate revised agreements with the Sellers named therein. In order to induce Clarence L. Nielson to incur the expense incident to such negotiation, your petitioner accepted said offer and granted to Clarence L. Nielson a 60-day option to purchase said contracts for said price, subject, however, to the approval of this Court.

Your petitioner is informed and believes that Clarence L. Nielson was unsuccessful in his efforts to negotiate revised agreements with said Sellers. Nevertheless, your petitioner was advised by Clarence L. Nielson that he and his wife were prepared to purchase said contracts for the sum of \$100,000, less the sum of \$5,000 to be paid to A. W. Wilson

as a real estate commission when and if the transaction is consummated, and there was submitted to your petitioner a form of letter agreement covering such purchase. On October 11, 1952, your petitioner, as Trustee, confirmed and approved said letter agreement and agreed to submit the offer of Clarence L. and Amy K. Nielson to this Honorable Court.

A true and correct copy of said letter agreement with Clarence L. and Amy K. Nielson is attached hereto as Exhibit 1 and by reference hereby made a part hereof. As appears from said letter agreement, Clarence L. and Amy K. Nielson have deposited the sum of \$100,000 in escrow, to be delivered to your petitioner upon the execution and delivery of an assignment to them, in the form attached thereto as Exhibit B thereof, of all of the right, title and interest of the Debtor in and to said contracts and upon the receipt of a final order of this Honorable Court approving said letter agreement and authorizing the execution of said assignment.

7. Your petitioner is of the opinion, as such Trustee, that it is to the best interests of the Debtor, the Debtor's Estate and the creditors and stockholders thereof, that said contracts be sold. Your petitioner is of the further opinion, as such Trustee, that the offer of Clarence L. and Amy K. Nielson is fair and reasonable and should be accepted.

Wherefore, your petitioner prays that an Order be made and entered herein:

1. Approving the letter agreement dated October 11, 1952, with Clarence L. Nielson and Amy K. Nielson, attached as Exhibit 1 hereof;

2. Authorizing your petitioner, as Trustee, to execute an assignment of all of the right, title and interest of the Debtor in and to the contracts described in paragraph 3 hereof to Clarence L. and Amy K. Nielson, in the form attached as Exhibit B to said letter agreement;

3. Authorizing the payment of the sum of \$5,000 to A. W. Wilson as a commission on said transaction;

4. Instructing your petitioner with respect thereto; and

5. Fixing the time and place of hearing on this Petition and directing the giving of notice thereof.

Dated: October 15, 1952.

/s/ FRED G. STEVENOT,
Trustee.

Duly Verified.

EXHIBIT No. 1

Mr. Fred G. Stevenot, Trustee,
Coastal Plywood & Timber Company,

Debtor, United States District Court for the Northern District of California, Northern Division,
No. 12223.

Dear Mr. Stevenot:

Subject to the terms and conditions hereinafter set forth, the undersigned hereby agree to purchase all of the right, title and interest of Coastal Plywood & Timber Company in and to the following described contracts:

(a) Agreement dated September 4, 1946, by and between Rankin P. Rickard, Marjorie Rickard, Wesley P. Rickard, Vina M. Rickard, Wesley L. Rickard and Grace H. Rickard, as Sellers, and H. C. Crofoot, Trustee for Coastal Plywood Corp., as Buyer, together with two supplements thereto.

(b) Agreement dated September 4, 1946, by and between Stanley E. and Delia Brush, as Sellers, and H. C. Crofoot, Trustee for Coastal Plywood Corp. as Buyer, together with three supplements thereto.

(c) Agreement dated September 4, 1946, by and between Pauline Brush, as Seller, and H. C. Crofoot, Trustee for Coastal Plywood Corp., as Buyer, together with two supplements thereto.

(d). Agreement dated September 5, 1946, by and between Stanley E. and Delia Brush, as Sellers, and Crofoot, Trustee for Coastal Plywood Corp., as Buyer, with three supplements thereto.

The undersigned acknowledge receipt of true copies of each of the above agreements and supplements thereto and further acknowledge that they have duly familiarized themselves with the terms and conditions thereof.

The terms and conditions upon which the under-

signed agree to purchase said contracts are as follows:

1. The purchase price to be paid by the undersigned is the sum of \$100,000, subject to a real estate commission of \$5,000 to be paid by Coastal Plywood & Timber Company to A. W. Wilson, Realtor, but only upon completion of this transaction and the receipt of such purchase price by Coastal Plywood & Timber Company. For the purpose of insuring payment of said purchase price the undersigned has deposited with Bank of America National Trust and Savings Association, 300 Montgomery Street, San Francisco, California, in escrow, the sum of \$100,000 with escrow instructions in the form attached as Exhibit A to this letter agreement.

2. This letter agreement is subject to final order of approval of the United States District Court for the Northern District of California in the proceedings for reorganization of Coastal Plywood & Timber Company above mentioned. You agree to make prompt application for such final order and upon such final order being entered by the Judge of said Court, and becoming final, this agreement shall become binding as an agreement of purchase and sale in accordance with its terms.

3. When this agreement shall have become binding as an agreement for purchase and sale as above provided, you will execute and deliver to the undersigned an assignment, in form annexed hereto as Exhibit B, which is incorporated herein by refer-

ence and made a part hereof, and you will thereupon be entitled to withdraw from Bank of America National Trust and Savings Association the said sum of \$100,000. At the option of the undersigned, this agreement may be terminated and the undersigned be released from all liability hereunder and shall be entitled to withdraw said sum of \$100,000 from said escrow unless an order has been entered by the Judge of the above entitled court and has become final on or before December 15, 1952.

If the foregoing is satisfactory to you, please indicate your acceptance in the appropriate space below.

Dated: San Francisco, California, October 11th, 1952.

CLARENCE L. NIELSON,
AMY K. NIELSON.

Confirmed and Approved:

FRED G. STEVENOT,
Trustee, Coastal Plywood &
Timber Company.

EXHIBIT A
ESCROW INSTRUCTIONS

To: Bank of America National Trust
& Savings Association
300 Montgomery Street
San Francisco 20, California

In Escrow, we deposit with you the sum of \$100,000 which you are authorized to pay to Fred G.

Stevenot, Trustee of Coastal Plywood & Timber Company, when you shall have received and hold for the account of the undersigned the following:

(a) Certified copy of a final Order of the United States District Court for the Northern District of California, Northern Division, in a cause entitled "In the Matter of Coastal Plywood & Timber Company, a corporation, Debtor, in Proceedings for the Reorganization of a Corporation," No. 12223, approving that certain letter agreement of even date herewith between Fred G. Stevenot, as Trustee of said Debtor, and the undersigned, and authorizing the execution of the assignment referred to in subparagraph (b) hereof;

(b) Assignment in the form attached to the above-mentioned letter agreement as Exhibit B thereto, duly executed by Fred G. Stevenot.

On payment of said sum to Fred G. Stevenot, you will deliver the documents above-mentioned in subparagraphs (a) and (b) hereof to the undersigned, provided that if said documents have not been received by you by December 15, 1952, you shall at any time thereafter before said documents are received by you, upon written demand of the undersigned, pay over to the undersigned said sum of \$100,000.

Dated: San Francisco, California, October 11th, 1952.

CLARENCE L. NIELSON
AMY K. NIELSON

Bank of America National Trust and Savings

Association acknowledges receipt of the sum of \$100,000 from Clarence L. Nielson and Amy K. Nielson, to be held subject to the foregoing instructions and also subject to all of the terms and conditions of the undersigned's escrow instructions which are incorporated herein by reference and made a part hereof.

Dated: San Francisco, California, October 11, 1952.

Bank of America National Trust and
Savings Association

/s/ By W. C. KOENIG,
Authorized Officer.

EXHIBIT B

Know All Men By These Presents:

That the undersigned Fred G. Stevenot, as Trustee of Coastal Plywood & Timber Company, Debtor in proceedings for reorganization of said Company, now pending before the United States District Court for the Northern District of California, Northern Division, No. 12223 (and not individually), for good and valuable consideration, the receipt whereof is hereby acknowledged, hereby quits, claims, sells, assigns, transfers and sets over unto Clarence L. Nielson and Amy K. Nielson, their heirs, successors and assigns, all of the right, title and interest of Coastal Plywood & Timber Company in and to the following described contracts, to-wit:

(a) Agreement dated September 4, 1946, by and

between Rankin P. Rickard, Marjorie Rickard, Wesley P. Rickard, Vina M. Rickard, Wesley L. Rickard and Grace H. Rickard, as Sellers, and H. C. Crofoot, Trustee for Coastal Plywood Corp., as Buyer, together with two supplements thereto.

(b) Agreement dated September 4, 1946, by and between Stanley E. and Delia Brush, as Sellers, and H. C. Crofoot, Trustee for Coastal Plywood Corp. as Buyer, together with three supplements thereto.

(c) Agreement dated September 4, 1946, by and between Pauline Brush, as Seller, and H. C. Crofoot, Trustee for Coastal Plywood Corp., as Buyer, together with two supplements thereto.

(d) Agreement dated September 5, 1946, by and between George E. Remmel, as Seller, and H. C. Crofoot, Trustee for Coastal Plywood Corp., as Buyer, with three supplements thereto.

This assignment is made without representation or warranty and free of any equity, except that the undersigned, as such Trustee (and not individually) represents and warrants that the following payments required by the above-described contracts to be made have been made:

(1) All property taxes levied and assessed against the growing timber or other property agreed to be sold in said contracts, up to and including the second installment of 1951-1952 taxes due January 20, 1952.

(2) Annual payments of \$1000 to Stanley E. and

Delia Brush payable pursuant to supplemental agreement dated December 10, 1947, between Stanley E. and Delia Brush and Coastal Plywood Corporation, on September 4, 1948, 1949, 1950, 1951 and 1952.

(3) Annual payments of \$500 to George E. Remmel payable pursuant to supplemental agreement dated December 10, 1947, between George E. Remmel and Coastal Plywood Corporation, on September 4, 1948, 1949, 1950, 1951 and 1952.

The above named assignees by their acceptance of this assignment hereby assume all obligations of Coastal Plywood & Timber Company under said contracts from the date of this assignment and agree to hold Coastal Plywood & Timber Company, its officers, directors, stockholders and creditors and the undersigned, as Trustee, free and harmless of and from any and all liability of whatsoever kind or character accruing or accrued to any person whatsoever by reason of any action or failure to take action, including failure to perform, of said assignees pursuant to or in attempted enforcement of any of the above described contracts or the supplements thereto or otherwise, or by reason of the conduct of any agents, employees, assignees, successors or invitees of said assignees or by reason of any conduct permitted by said assignees; provided that said assignees do not assume any liability for any claims arising out of or in connection with any action taken by Coastal Plywood & Timber Company or any other events occurring prior to this assignment.

In Witness Whereof, the undersigned has executed this assignment pursuant to and in conformity with an Order of the above-entitled court duly made and entered in the above-entitled proceeding the day of, 1952.

Dated: San Francisco, California, 1952.

.....
FRED G. STEVENOT,
Trustee of Coastal Plywood &
Timber Company.

[Endorsed]: Filed Oct. 16, 1952.

[Title of District Court and Cause.]

**ORDER AUTHORIZING TRUSTEE TO SELL
AND ASSIGN CERTAIN CONTRACTS OF
THE DEBTOR**

At a Court of Bankruptcy, held in and for the Northern District of California, Northern Division, at Sacramento, on the 12th day of November, 1952, before Honorable Dal M. Lemmon, Judge of the United States District Court for the Northern District of California, Northern Division.

This cause having come on regularly to be heard on the 3rd day of November, 1952, pursuant to an Order entered herein on October 16, 1952; and notice of said hearing having been given to all known creditors and stockholders of the Debtor herein by mail and publication in the manner required by said Order; and the Court having read and considered the Petition of the Trustee, dated October 15,

1952, for authority to sell certain contracts of the Debtor; and all parties interested having been heard,

It Is Hereby Ordered:

1. That the letter agreement dated October 11, 1952, by and between Fred G. Stevenot, as Trustee herein, and Clarence L. Nielson and Amy K. Nielson, providing for the purchase by said Clarence L. Nielson and Amy K. Nielson of certain contracts of the Debtor, be and the same is hereby approved in the form attached as Exhibit 1 to said Petition of the Trustee dated October 15, 1952.

2. That Fred G. Stevenot, as Trustee herein, be and he is hereby authorized, on behalf of the Debtor, to execute an assignment of all of the right, title and interest of the Debtor in and to said contracts to said Clarence L. Nielson and Amy K. Nielson, in the form attached to said letter agreement as Exhibit B thereto, and to deliver said assignment to or for the account of Clarence L. Nielson and Amy K. Nielson upon the receipt for the account of the Debtor of the sum of \$100,000, representing the full purchase price for said contracts.

3. That Fred G. Stevenot, as Trustee herein, be and he is hereby authorized to pay to A. W. Wilson, from said sum of \$100,000, a commission on said transaction in the amount of \$5,000.

Dated this 12th day of November, 1952.

/s/ DAL M. LEMMON,

United States District Judge.

[Endorsed]: Filed Nov. 12, 1952.

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF REAL
ESTATE BROKERS COMMISSION

To the Honorable Judge of the United States District Court for the Northern District of California, Northern Division:

The Petition of Alex E. Wilson respectfully represents:

1. That your Petitioner is a duly licensed real estate broker in the State of California, and makes this Petition for the allowance of a real estate brokers commission or for reasonable compensation for services rendered, in procuring J. J. Sugarman Co. and Sugarman Lumber Company as the purchaser of the assets of Coastal Plywood & Timber Company, the debtor corporation in the above entitled reorganization proceedings.

2. That Fred G. Stevenot is the duly appointed and acting Trustee of Coastal Plywood & Timber Company, the above named debtor corporation.

3. That during the month of August, 1952, your Petitioner first contacted Fred G. Stevenot, Trustee, and discussed with said Trustee the properties of Coastal Plywood & Timber Company. Your Petitioner was informed that said debtor corporation desired to sell all of its rights, title and interest in and to certain contracts and agreements and that it then desired to sell all of the balance of its assets

in one transaction to one purchaser. That your Petitioner was instructed by Fred G. Stevenot to proceed with the sale of the right, title and interest of said debtor corporation in and to certain contracts and agreements first, and then to proceed with the sale of all of the other assets of said corporation.

4. That your Petitioner immediately contacted most of the large and financially responsible corporations, firms and individuals engaged in the purchase and sale of timber and lumber on the West Coast, and finally contacted a certain Clarence L. Nielson and Amy K. Nielson who on October 11, 1952, submitted to said Trustee, Fred G. Stevenot, their offer to purchase all of the right, title, and interest of Coastal Plywood & Timber Company, the debtor corporation, in and to certain contracts and agreements for the sum of One Hundred Thousand and 00/100 (\$100,000.00) Dollars.

5. That on or about November 12, 1952, the above entitled Court approved the assignment of all of the right, title, and interest of Coastal Plywood & Timber Company in and to certain contracts and agreements to said purchasers, Clarence L. Nielson and Amy K. Nielson, and the above entitled Court authorized Coastal Plywood & Timber Company to pay Alex E. Wilson a real estate brokers commission in the sum of Five Thousand and 00/100 (\$5,000.00) Dollars. That said real estate brokers commission was subsequently paid by Coastal Plywood & Timber Company to your Petitioner.

6. That your Petitioner continued his negotiations for the sale of all of the other assets of Coastal Plywood & Timber Company, and devoted his time and attention for a period of more than eight months exclusively to the task of obtaining a purchaser for the balance of the assets of Coastal Plywood & Timber Company. That during this time your Petitioner personally contacted most of the larger lumber concerns in California, Oregon, and Washington, who were capable of handling a transaction of this size, and personally expended considerable money in travel and other expenses during these negotiations. That your Petitioner placed advertisements in various newspapers, carried on extensive correspondence, and personally discussed the purchase of the assets of Coastal Plywood & Timber Company with many persons and firms in an effort to obtain a purchaser for these assets.

7. That during all of this time your Petitioner was continually in contact with Fred G. Stevenot, Trustee for the debtor corporation, in regard to the work he was doing and the persons and firms to whom he had submitted proposals for the purchase of these assets. That various conversations were held in the offices of Fred G. Stevenot and various letters were written to Fred G. Stevenot as Trustee setting forth the efforts being made by your Petitioner, lists of the various firms to which proposals for the purchases of these assets were submitted and the reactions of these firms to these proposals. That Fred G. Stevenot as Trustee was aware of and acquiesced in the aforesaid services rendered by

your Petitioner and cooperated with and encouraged your Petitioner in every way, and provided your Petitioner with the information required in these negotiations together with copies of financial reports, cruises, property maps and inventories for submission to interested parties.

8. That during this period a First Plan of Reorganization of the above named corporation was pending before this Court which plan proposed the continuation of the business of Coastal Plywood & Timber Company in the reorganization proceedings. That this plan of reorganization was not acceptable to the Bank of America, National Trust and Savings Association, or to the Reconstruction Finance Corporation who insisted that any plan of reorganization contain a provision for payment of a substantial portion of the indebtedness due to these creditors. That the objection of these creditors to the First Plan of Reorganization made a sale of the assets of Coastal Plywood & Timber Company imperative if the forced sale of the assets of this corporation in bankruptcy with the resulting loss to creditors and stockholders was to be avoided.

9. That during the month of April, 1953, your Petitioner submitted to William Steinberg, Attorney for J. J. Sugarman Company of Los Angeles, California, N. N. Sugarman and Barney Margolis, a proposal for the purchase of all of the assets of Coastal Plywood & Timber Company. That your Petitioner was thereafter in continual contact with

William Steinberg, both by telephone and by conference, and your Petitioner provided said William Steinberg with information and documents necessary to assist his clients in formulating a proposal to be submitted to Fred G. Stevenot, Trustee of the debtor corporation for the purchase of the assets of Coastal Plywood & Timber Company.

10. That Fred G. Stevenot, as Trustee of Coastal Plywood & Timber Company, had informed your Petitioner that all of the assets of Coastal Plywood & Timber Company must be sold in one transaction to one purchaser, and that he would not continually petition the Court for approval of sales of portions of the assets of Coastal Plywood & Timber Company. That J. J. Sugarman Co., N. N. Sugarman, Barney Margolis and Associates informed your Petitioner that they would be interested in purchasing all of the assets of Coastal Plywood & Timber Company only if they were guaranteed a resale of a portion of these assets, and they required that they be protected in the purchase of the assets of Coastal Plywood & Timber Company by other persons and firms placing in escrow written agreements for the purchase of portions of said assets. That your Petitioner was instrumental in procuring various purchasers who were ready, willing and able and did agree to purchase portions of the assets of Coastal Plywood & Timber Company from J. J. Sugarman Co. and Associates after they had acquired said assets. That your Petitioner assisted in securing a resale of a portion of the assets of Coastal Plywood & Timber

Company by procuring for J. J. Sugarman Co., and Sugarman Lumber Company the following purchasers for the following portion of the assets of Coastal Plywood & Timber Company:

1. To Hollow Tree Lumber Company all timber contained in Unit #1 of that certain cruise by Hammon, Jensen & Wallen dated September 22, 1952, for the sum of \$1,350,000.00.

2. To Fred Holm all timber contained in Unit #2 of that certain cruise by Hammon, Jensen & Wallen dated September 22, 1952, for the sum of \$1,200,000.00.

3. To William Moores and William Smith all timber contained in Unit #3 and Unit #4 of that certain cruise by Hammond, Jensen & Wallen, dated September 22, 1952, for the sum of \$2,200,000.00.

4. To William Moores and William Smith, mill, machinery, equipment, lumber and log deck for the sum of \$1,500,000.00.

That these services by your Petitioner resulted in an offer being made by J. J. Sugarman Co. for the purchase of the assets of Coastal Plywood & Timber Company. That by virtue of these services, and the other services mentioned herein, your Petitioner made possible the ultimate consummation of the sale of the assets of Coastal Plywood & Timber Company to Sugarman Lumber Company.

11. That on or about July 22, 1953, a formel offer

on behalf of J. J. Sugarman Co. of Los Angeles, California, was submitted by their attorney, William Steinberg, to Coastal Plywood & Timber Company and Fred G. Stevenot, Trustee, for the purchase of the assets of Coastal Plywood & Timber Company, a corporation, for the sum of Three Million, Seven Hundred Fifty Thousand and 00/100 (\$3,750,000.00) Dollars. A copy of this offer is attached hereto and marked Exhibit A.

12. Following this offer of July 22, 1953, J. J. Sugarman Co., N. N. Sugarman, Barney Margolis, and Associates, continued to negotiate through their attorney, William Steinberg, for the purchase of the assets of Coastal Plywood & Timber Company on terms and conditions which would be satisfactory to the parties concerned and to the creditors and stockholders of Coastal Plywood & Timber Company. That these negotiations resulted in a Second Plan of Reorganization as Amended which was approved by this Court on March 16, 1954, authorizing the sale of the assets of Coastal Plywood & Timber Company for the sum of Four Million, Four Hundred Fifty-Two Thousand, Two Hundred Seventy-Five and 00/100 (\$4,452,275.00) Dollars to Sugarman Lumber Company, a California corporation organized by N. N. Sugarman, Abe Sugarman, Barney Margolis, and Associates for the purpose of purchasing the assets of Coastal Plywood & Timber Company. That a portion of the assets of Coastal Plywood & Timber Company included in said sale to Sugarman Lumber Company procured by your Petitioner as aforesaid consisted of per-

sonal property in the form of a mill, machinery, equipment, lumber and log deck of the reasonable value of approximately One Million, Five Hundred Thousand and 00/100 (\$1,500,000.00) Dollars and that this sale was also consumated through the efforts and services of your Petitioner as aforesaid. That the established broker's commission for the sale of personal property is 10% of the first Five Thousand and 00/100 (\$5,000.00) Dollars and 5% of the balance of the purchase price.

13. That at all times herein mentioned Fred G. Stevenot, as Trustee for Coastal Plywood & Timber Company, was fully aware of, acquiesced in, consented to and took advantage of the services and expenditures of time and money by your Petitioner in procuring Sugarman Lumber Company as an acceptable purchaser of the assets of Coastal Plywood & Timber Company. That your Petitioner was the agency which brought together Coastal Plywood & Timber Company, as Seller, and Sugarman Lumber Company, as Buyer, and was the predominating, effective and procuring cause of the sale of the assets of Coastal Plywood & Timber Company to Sugarman Lumber Company as aforesaid.

14. That your Petitioner has rendered exceptional services to Fred G. Stevenot, as Trustee of Coastal Plywood & Timber Company, and to the creditors and stockholders of the debtor corporation in the administration of the above entitled estate by procuring for said estate the purchaser of the assets of Coastal Plywood & Timber Com-

pany. That the services of your Petitioner were of great benefit to this estate and to the creditors and stockholders of the debtor corporation. That the reasonable value of the services of your Petitioner as a real estate broker is 5% of the total purchase price paid, and that the reasonable value of the services rendered by your Petitioner in the administration of this estate is in the sum of Two Hundred Twenty-Two Thousand Six Hundred Thirteen and 75/100 (\$222,613.75) Dollars.

15. That your Petitioner has no beneficial interest in Coastal Plywood & Timber Company and that after the commencement of this proceeding, no beneficial interest, direct or indirect, in any claims against or stock of the Coastal Plywood & Timber Company, the above named debtor, has been acquired or transferred by your Petitioner, or for his account, other than the claim contained herein.

Wherefore, your Petitioner prays that this Court fix a time and place for the hearing of this Petition for Allowance of Real Estate Brokers Commission; that this Court direct the Trustee in the above entitled proceedings to give notice of the time and place of said hearing as provided by law; that at the hearing of this Petition your Petitioner be allowed a real estate brokers commission for services rendered in the administration of the above entitled estate in the sum of Two Hundred Twenty-Two Thousand Six Hundred Thirteen and 75/100 (\$222,613.75) Dollars, or such other sums as to the Court may seem just and reasonable for the pro-

curing of the purchaser of the assets of debtor corporation; that this allowance be classified as administrative expense and be given the priority of administrative expense as set forth in the Second Plan of Reorganization as amended which has been approved by this Court; and for such other orders and decrees as may be proper in the premises.

Dated: May 24, 1954.

/s/ ALEX E. WILSON,

Petitioner.

FILES & McMURCHIE,

Attorneys for Petitioner.

Duly Verified.

Memorandum of Points and Authorities

National Bankruptcy Act, Section 77B, 241, 242, 243, 247, and 249; (11 USCA Sections 207, 641 and following).

Berman vs. Palmetto Apartments Corporation,
153 Federal 2nd 192.

EXHIBIT "A"

July 22, 1953

Coastal Plywood and Timber Company

and

Fred G. Stevenot, Acting Trustee for

Coastal Plywood and Timber Company

300 Montgomery Street

San Francisco, California

Re: No. 12223 United States District Court

Gentlemen:

On behalf of J. J. Sugarman Co. of Los Angeles, California, I am authorized to make an offer of purchase for them of all of the assets of the Coastal Plywood and Timber Company, a corporation, upon the terms and conditions hereinafter set forth.

The Coastal Plywood and Timber Company, having filed its petition for an arrangement under the provisions of Chapter XI, shall assign, transfer and convey to J. J. Sugarman Co. all of its assets hereinafter described, so as to enable it to effectuate a plan for arrangement under said Chapter XI, as follows:

1. That the total purchase price is \$3,750,000.00 for all of the net assets of Coastal Plywood and Timber Company, consisting of land, timber, lumber, logs, cash, accounts receivable, rolling stock, plant, machinery, equipment, mill site, etc. as per

Balance Sheet of December 31st, 1952, prepared by Hood and Strong, Certified Public Accountants, totalling \$4,555,310.80, or the balance Sheet of June 30th, 1953, whichever is greater, free and clear of all contracts, conditional sales contracts, claims, liens, encumbrances, taxes, penalties, and assessments of every form and nature.

2. The sum of \$750,000.00 to be paid within ten (10) days after acceptance and confirmation of this arrangement by the Court.

3. The balance of \$3,000,000.00 to be paid within ninety (90) days after acceptance and confirmation of this arrangement by the Court, so that J. J. Sugarman Co. can be given the opportunity of organizing a new corporation to take over the said assets, pay the sum of \$3,000,000.00, and to provide adequate working capital for the corporation.

4. That out of the \$3,750,000.00 all contracts, claims, liens, encumbrances, taxes, penalties and assessments of every form and nature are to be paid in order of their priority, and the balance remaining is to be paid to the stockholders, so that J. J. Sugarman Co. and its successor in interest shall receive a good and merchantable title to all of the assets purchased.

5. Upon acceptance and confirmation of this arrangement by the Court, J. J. Sugarman Co., Coastal Plywood and Timber Company, and the Trustee for the latter company, shall mutually agree upon a continuation of the business operations of said Coastal Plywood and Timber Com-

pany until J. J. Sugarman Co. or its successors in interest can take full possession of all of the assets in accordance with the terms hereinabove set forth, and all profits made or losses suffered from the date of acceptance and confirmation of the arrangement by the Court, shall accrue to J. J. Sugarman Co. or its successor in interest.

6. J. J. Sugarman Co. or its successor in interest shall not be responsible for any fees, costs or expenses, by virtue of this transaction being called to their attention.

Very truly yours,

.....

William Steinberg

WS-MG

cc to J. J. Sugarman Co.

Orrick, Dahlquist, Herrington & Sutcliffe

Attorneys for Trustee

Sterling Carr

Attorney for Trustee

Bronson, Bronson & McKinnon

Attorneys for Debtor

[Endorsed]: Filed May 25, 1954.

[Title of District Court and Cause.]

ORDER FIXING HEARING FOR CONSIDER-
ATION OF PETITION FOR ALLOWANCE
OF REAL ESTATE BROKERS COMMIS-
SION

At a Court of Bankruptcy held in and for the Northern District of California, Northern Division, at Sacramento, California, on the 25th day of May, 1954, before the Honorable Judge of the United States District Court for the Northern District of California, Northern Division.

Upon the Petition for Allowance of Real Estate Brokers Commission by Alex E. Wilson dated and duly verified on the 24th day of May, 1954, and sufficient cause appearing therefor.

It is Hereby Ordered, Adjudged and Decreed as follows:

(1) That a hearing for the consideration of said Petition for Allowance of Real Estate Brokers Commission, and for the consideration of such objections as may be made to said Petition, and, in the event said commission is allowed, for the entry of such decrees and orders as may be necessary or appropriate to fix the priority and manner of payment of said commission, shall be held on the 11th day of June, 1954, at the hour of 11 o'clock a.m., or as soon thereafter as the matter can be heard, at the Courtroom of the above entitled Court located in the Post Office Building, Ninth and "I" Streets, Sacramento, California.

(2) That Fred G. Stevenot, as Trustee of Coastal Plywood & Timber Company, is hereby ordered and directed to cause notice of said hearing to be given to the Debtor, to the creditors and stockholders of the Debtor and any indenture trustee, and to the Securities and Exchange Commission, by mailing, at least ten days before said hearing, a copy of a notice thereof to the last known address or place of business of each of said persons, and by publication of such notice at least once a week for two successive weeks in the "Sonoma County Herald", the first of such publications to be at least one week before said hearing. Such notice shall be substantially in the following form:

Notice of Petition for Allowance of Real
Estate Brokers Commission

In the United States District Court for the Northern District of California, Northern Division

In the Matter of Coastal Plywood & Timber Company, a corporation, Debtor—No. 12223.

To the creditors, stockholders, and any indenture trustee of Coastal Plywood & Timber Company, and to the Secretary of the Treasury and the Securities and Exchange Commission:

Pursuant to an order of the above entitled Court made and entered on the 25th day of May, 1954, Notice Is Hereby Given That on the 11th day of June, 1954, at the hour of 11 o'clock a.m., or as soon thereafter as the matter can be heard, at the court-

room of the above entitled Court located in the Post Office Building, Ninth and "I" Streets, Sacramento, California, a hearing will be held for the consideration of a Petition for Allowance of Real Estate Brokers Commission, and for the consideration of such objections as may be made to such allowance, and, in the event said commission is allowed, for the entry of such decrees and orders as may be necessary or appropriate to fix the priority and manner of payment of said commission.

The original Petition for Allowance of Real Estate Brokers Commission may be examined at the office of the Clerk of the above entitled Court in the Post Office Building, Ninth and "I" Streets, Sacramento, California, and copies thereof may be examined at the office of the undersigned and at the office of the Debtor.

Dated: May 25, 1954.

FRED G. STEVENOT,

As Trustee of Coastal Plywood
& Timber Company.

Dated: May 25, 1954.

/s/ OLIVER J. CARTER,

United States District Judge.

[Endorsed]: Filed May 25, 1954.

[Title of District Court and Cause.]

OBJECTIONS BY TRUSTEE TO ALLOW-
ANCE OF REAL ESTATE BROKER'S
COMMISSION

To the Honorable Judge of the United States Dis-
trict Court for the Northern District of Cali-
fornia, Northern Division:

Fred G. Stevenot, the duly appointed, qualified and acting Trustee of the Estate of Coastal Ply-wood & Timber Company, objects to the allowance of any real estate broker's commission or other compensation to Alex E. Wilson, claimed in the Petition for Allowance of Real Estate Brokers Commis-sion filed herein on May 25, 1954, on the following grounds:

1. Your Trustee is without knowledge or infor-mation sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of said petition.

2. Your Trustee denies each and all of the alle-gations contained in Paragraph 3 of said petition, except that your Trustee admits that petitioner called upon your Trustee in July, 1952, and ascer-tained that your Trustee was considering the sale of certain timber-cutting rights of the Debtor.

3. Your Trustee is without knowledge or infor-mation sufficient to form a belief as to the truth of the allegations commencing with the word "That" in line 8, page 2 of said petition and ending with the

word "Nielson" in line 12, page 2 of said petition, constituting a portion of Paragraph 4 of said petition.

4. Your Trustee denies each and all of the allegations commencing with the word "the" in line 22, page 2 of said petition and ending with the word "Petitioner" in line 26, page 2 of said petition, constituting a portion of Paragraph 5 of said petition, except that your Trustee admits that this Honorable Court authorized your Trustee to pay to petitioner, from the proceeds of sale of certain contracts, pursuant to the specific authorization and requirement of the purchasers of such contracts, the sum of \$5,000 and that such sum was paid to petitioner.

5. Your Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of said petition.

6. Your Trustee denies each and all of the allegations contained in Paragraph 7 of said petition, except that your Trustee admits that petitioner called upon your Trustee on several occasions and stated to your Trustee that petitioner was endeavoring to develop a reorganization proposal on behalf of various clients or prospective clients of petitioner for submission to your Trustee, admits that certain letters concerning such endeavor were received by your Trustee, and further admits that your Trustee delivered to petitioner and other prospective proponents of reorganization proposals various financial reports and other information concerning the Debtor's assets and properties.

7. Your Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of said petition.

8. Your Trustee denies each and all of the allegations commencing with the word "That" in line 18, page 4 of said petition and ending with the word "Company" in line 23, page 4 of said petition, constituting a portion of Paragraph 10 of said petition. Your Trustee is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said Paragraph 10.

9. Your Trustee denies each and all of the allegations contained in Paragraph 12 of said petition, except that your Trustee admits that, during the period commencing on or about July 22, 1953 and ended on or about December 12, 1953, your Trustee negotiated with N. N. Sugarman, Abe Sugarman and Barney Margolis, and their attorney, Nathan M. Dicker, for the sale of assets of the Debtor; that these negotiations resulted in the receipt by your Trustee from Sugarman Lumber Company on December 12, 1953, of an offer to purchase substantially all of the assets of the Debtor; that your Trustee prepared and submitted to this Honorable Court a Second Plan of Reorganization of the Debtor based upon said offer; that further negotiations with the aforesaid individuals and with Samuel C. Rudolph and Charles J. Katz resulted in certain improvements to the aforesaid offer and Second Plan of Reorganization; that said Second Plan of Reorganization was confirmed by Order of this

Honorable Court entered March 16, 1954; that, pursuant to said Second Plan of Reorganization, as amended, your Trustee has sold all assets of the Debtor, except cash, receivables and certain rights to recover property taxes, to Sugarman Lumber Company; and that a portion of the assets so sold consisted of personal property.

10. Your Trustee denies each and all of the allegations contained in Paragraph 13 of said petition.

11. Your Trustee denies each and all of the allegations contained in Paragraph 14 of said petition.

12. Your Trustee is informed and believes and therefore alleges that petitioner, at all of the times mentioned in said petition, acted on behalf of a person or persons other than your Trustee, and that petitioner at no time represented or acted for or on behalf of your Trustee, the Debtor or any other party in interest in these proceedings.

Wherefore, your Trustee prays that said petition of Alex E. Wilson for allowance of a real estate broker's commission be dismissed.

Dated: San Francisco, California, June 10, 1954.

/s/ FRED G. STEVENOT,
Trustee.

ORRICK, DAHLQUIST, HER-
RINGTON & SUTCLIFFE,

/s/ STERLING CARR,
Attorneys for Trustee.

Duly Verified.

[Endorsed]: Filed June 11, 1954.

[Title of District Court and Cause.]

AFFIDAVIT OF TRUSTEE IN OPPOSITION
TO PETITION FOR ALLOWANCE OF
REAL ESTATE BROKERS COMMISSION

State of California,
City and County of San Francisco—ss.

Fred G. Stevenot, being first duly sworn, deposes and says:

1. That he is the duly appointed, qualified and acting Trustee of the estate of Coastal Plywood & Timber Company, the Debtor herein, and for the purpose of the record herein outlines all of his conferences and discussions with Alex E. Wilson, claimant named in the above-mentioned petition.

2. That, prior to December 12, 1952, the Debtor herein owned certain timber-cutting rights evidenced by four contracts, and various supplements thereto, which contracts are more particularly described in the petition of affiant for authority to sell said contracts filed herein on October 16, 1952; that, in July, 1952, said Alex E. Wilson came to affiant's office and advised affiant that said Alex E. Wilson could sell said cutting rights; that affiant stated to said Alex E. Wilson that affiant was endeavoring to negotiate certain modifications of said contracts which were necessary to permit affiant to exercise said timber-cutting contracts on behalf of the Debtor, but that if such negotiations were unsuccessful affiant proposed to sell said contracts,

subject to the approval of this Honorable Court, if a reasonable price could be obtained; that said Alex E. Wilson told affiant that said Alex E. Wilson had a party interested in purchasing said contracts; that affiant specifically stated to said Alex E. Wilson that affiant would consider any offer which might be submitted but that neither affiant nor the Debtor would employ any broker or agent to act on behalf of affiant or the Debtor in connection with the offer or sale of said contracts; that affiant at no time instructed or authorized said Alex E. Wilson or any other person to offer or sell said contracts or any other property of the Debtor, or to act on behalf of affiant or the Debtor in any respect whatsoever, and in truth and fact affiant then stated to said Alex E. Wilson that said Alex E. Wilson must act only on behalf of the purchaser of said contracts and not on behalf of affiant; that said Alex E. Wilson then knew that affiant was acting in a fiduciary capacity, to wit, as Trustee of the Debtor under the jurisdiction of this Honorable Court, and knew, and was told by affiant, that affiant was not empowered to employ any real estate agent or broker or to bind the estate of the Debtor for the payment of any fee or commission.

3. That, on or about August 19, 1952, said Alex E. Wilson, acting on behalf of Clarence L. Nielson, submitted to affiant an offer of said Clarence L. Nielson to purchase said contract for a price of \$100,000, conditioned upon negotiation of satisfactory changes in said contracts; that said offer was accepted by affiant, subject to the approval of

this Court; that said Clarence L. Nielson was unable at that time to negotiate the changes in said contracts, and affiant continued to negotiate with said Clarence L. Nielson and his attorney, Aaron Cohen, for a sale of the Debtor's interest in said contracts; that, on October 11, 1952, affiant received from Clarence L. Nielson and Amy K. Nielson a new offer to purchase said contracts; that said offer by its terms recited that

“The purchase price to be paid by the undersigned is the sum of \$100,000, subject to a real estate commission of \$5,000 to be paid by Coastal Plywood & Timber Company to A. W. Wilson.”

that said A. W. Wilson referred to in said offer is the said Alex E. Wilson; that affiant forthwith endeavored to induce Clarence L. Nielson and Amy K. Nielson to eliminate from their said offer the requirement that Coastal Plywood & Timber Company pay a commission, for the reason that said Alex E. Wilson had represented Clarence L. Nielson and Amy K. Nielson and had not, and was not authorized to, represent affiant; that Clarence L. Nielson and Amy K. Nielson refused to invest more than \$100,000 in said contracts, including said commission, and therefore refused to eliminate said requirement; that the purchase price was accordingly adjusted by reducing the price to be paid to the Debtor to \$95,000 to enable said Clarence L. Nielson and Amy K. Nielson to limit their total investment to \$100,000; that affiant was of the opinion that \$95,000 was a reasonable price for said

contracts and agreed to submit said offer to this Honorable Court; that said offer was submitted to this Honorable Court by petition of your affiant filed in the above-entitled proceedings on October 16, 1952, which petition and the offer of Clarence L. Nielson and Amy K. Nielson attached thereto are by reference hereby incorporated herein and made a part hereof; that said petition recites that

“your petitioner was advised by Clarence L. Nielson that he and his wife were prepared to purchase said contracts for the sum of \$100,000, less the sum of \$5,000 to be paid to A. W. Wilson as a real estate commission * * *” (said A. W. Wilson being the said Alex E. Wilson); that by Order Dated November 12, 1952, this Honorable Court authorized affiant to sell and assign said contracts to Clarence L. Nielson and Amy K. Nielson on the terms set forth in said offer and to pay over to said Alex E. Wilson the sum of \$5,000 from the proceeds of such sale as required by said offer, resulting in a net price to the Debtor of \$95,000; that, pursuant to said Order, affiant did sell and assign said contracts to Clarence L. Nielson and Amy K. Nielson and did pay over to said Alex E. Wilson the sum of \$5,000; that said sum of \$5,000 was not paid to said Alex E. Wilson as a commission or compensation for services rendered on behalf of the Debtor or affiant, but was paid solely because such payment was a condition to the purchase of said contracts by said Clarence L. Nielson and Amy K. Nielson; that said Alex E. Wilson at not time was authorized to represent or act

for or on behalf of affiant or the Debtor and that said Alex E. Wilson at no time represented or performed any services for or on behalf of affiant or the Debtor.

4. That, following the sale of said contracts to Clarence L. Nielson and Amy K. Nielson, said Alex E. Wilson called upon affiant and inquired as to the status of affiant's efforts to reorganize the Debtor; that, in view of the fact that Clarence L. Nielson and Amy K. Nielson had conditioned their purchase of timber contracts of the Debtor as afore-said upon payment of a commission to said Alex E. Wilson, affiant immediately admonished said Alex E. Wilson that under no circumstances would affiant employ any agent or broker to act for affiant or the Debtor in the solicitation, development or submission of an offer to purchase any assets of the Debtor or other reorganization proposal; that affiant stated to said Alex E. Wilson that under no circumstances would affiant or the Debtor pay any commission or other compensation to said Alex E. Wilson or any other broker for any efforts which might be made to obtain a purchaser of assets of the Debtor or to develop a reorganization proposal; that affiant emphasized repeatedly to said Alex E. Wilson that said Alex E. Wilson was not authorized and would not be authorized to represent or act on behalf of affiant or the Debtor to any extent whatsoever and that if said Alex E. Wilson made any effort to develop a sale of the Debtor's properties or other reorganization proposal, said Alex E. Wilson must act solely on behalf of the pur-

chasers or other proponents; that affiant further advised said Alex E. Wilson that, while affiant would consider all proposals submitted, affiant was then primarily interested in developing a reorganization plan which would preserve the equity interest in the Debtor's properties for its stockholders and that affiant would not sell the Debtor's properties except as a last resort; that said Alex E. Wilson repeatedly on several occasions stated to affiant that said Alex E. Wilson fully understood all of the foregoing and would seek compensation from the proponents of any offer or proposal which he might submit.

5. That affiant at no time authorized said Alex E. Wilson to represent or act for or on behalf of affiant or the Debtor; that affiant at no time invited said Alex E. Wilson to call upon affiant and, while said Alex E. Wilson did call at affiant's office on several occasions and advised affiant that he was working on a reorganization proposal, affiant always understood from his discussions with said Alex E. Wilson that said Alex E. Wilson was acting on behalf of the proponents of such proposal; that, in order that there could be no misunderstanding, affiant repeated to said Alex E. Wilson on numerous occasions that under no circumstances would said Alex E. Wilson be employed or authorized to represent or act for or on behalf of the Debtor or affiant and under no circumstances would any commission or compensation be paid to said Alex E. Wilson by affiant or from the Debtor's estate; that said Alex E. Wilson stated to affiant that he would obtain his compensation from the proponents

of any offer or proposal which he might submit and would not seek any compensation from affiant or the Debtor; that on July 22, 1953, affiant mailed to said Alex E. Wilson the following letter, to-wit:

“July 22, 1953

Mr. Alex E. Wilson
155 Montgomery Street
San Francisco, California

Dear Mr. Wilson:

I wish to thank you for your letter of July 17 advising me of your current efforts to develop a plan of reorganization of Coastal Plywood and Timber Company.

The plan of reorganization which I have filed with the Court has not yet been passed upon by Judge Lemmon and I will receive and consider any proposals which you may desire to submit on behalf of your clients. Of course, any plan which you may submit should be of the nature contemplated by Chapter X of the Bankruptcy Act. Moreover, as I have previously advised you, neither I nor Coastal Plywood & Timber Company may be obligated for any commissions payable in connection with such a plan, and any such commissions must be paid by the investors for whom you act.

Yours very truly,
Fred G. Stevenot,
Trustee,
Coastal Plywood & Timber Company”

that said Alex E. Wilson admitted to affiant on several occasions that said Alex E. Wilson received the foregoing letter.

6. That said Alex E. Wilson on several occasions requested from affiant various financial reports and other information concerning the Debtor's properties and operations, which reports and information were supplied by affiant; that such reports and information were supplied to said Alex E. Wilson because said Alex E. Wilson represented to affiant that he and his associates were developing a reorganization proposal or offer for submission to affiant; that affiant supplied similar reports and information to numerous other firms, corporations and individuals who indicated to affiant that they were considering or developing a reorganization proposal for submission to affiant; that affiant deemed it advisable, and in fact affiant's duty as Trustee herein, to widely disseminate information concerning the Debtor in order that all reorganization possibilities might be explored.

7. That, on July 3, 1953, affiant was advised by the Reconstruction Finance Corporation, the principal creditor of the Debtor, that said creditor would not approve the first plan of reorganization filed herein by affiant; that thereafter affiant endeavored to attract offers to purchase the properties of the Debtor in order to avert a threatened foreclosure by said creditor; that on July 22, 1953, William Steinberg, an attorney at law, purporting to act for J. J. Sugarman Co. of Los Angeles, California, submitted to affiant an offer to purchase

all of the assets of the Debtor for a price of \$3,750,-000; that on or about said date said Alex E. Wilson called at affiant's office and stated to affiant that said Alex E. Wilson had participated in the preparation of said offer; that said statement by Alex E. Wilson to affiant has never been confirmed by any officer or authorized representative of J. J. Sugarman Co.; that affiant at said meeting again repeated to said Alex E. Wilson that said Alex E. Wilson was not authorized to represent or act for or on behalf of affiant or the Debtor and that no commission or compensation would be paid to said Alex E. Wilson by affiant or the Debtor; that said Alex E. Wilson replied to affiant that he was acting for and would be compensated by said William Steinberg; that on several occasions thereafter said Alex E. Wilson stated to affiant that said Alex E. Wilson had an agreement with said William Steinberg for the payment by said William Steinberg to said Alex E. Wilson of compensation for calling the sale of the Debtor's properties to the attention of said William Steinberg; that said Alex E. Wilson thereafter furnished to affiant's counsel a copy of the following letter received by said Alex E. Wilson from said William Steinberg:

"August 25, 1953.

Mr. Alex E. Wilson,
155 Montgomery Street, Suite 501,
San Francisco, California.

Dear Sir:

This is to acknowledge that you brought to my attention the sale of the Coastal Plywood

Company and that I in turn brought it to the attention of N. N. Sugarman of Los Angeles who evidenced a great interest in purchasing the same.

When and if N. N. Sugarman or his associates purchase the Coastal Plywood Company they have agreed to compensate me reasonably.

Out of this compensation I hereby agree to pay to Alex E. Wilson the sum of \$25,000 and to Redge Kuhen the sum of \$10,000.

Very truly yours,

/s/ William Steinberg."

8. That said offer presented to affiant by William Steinberg was not acceptable to affiant; that, commencing in November, 1953, affiant negotiated with N. N. Sugarman and Barney Margolis and their attorney, Nathan M. Dicker, concerning a possible offer to purchase assets of the Debtor; that said negotiations continued over a period of several weeks and culminated in an offer by Sugarman Lumber Company, of Los Angeles, California, to purchase all of the assets of the Debtor except cash, accounts receivable and certain rights to recover property taxes; that said offer was dated December 12, 1953, and is attached to and constitutes a part of the Second Plan of Reorganization of the Debtor filed by affiant herein on December 21, 1953, which Second Plan of Reorganization is by reference hereby incorporated herein and made a part hereof; that thereafter affiant continued to negotiate with said Sugarman Lumber Company and obtained cer-

tain improvements to said offer of Sugarman Lumber Company, which amendments were incorporated in the Second Plan of Reorganization, as amended, confirmed by Order of this Honorable Court on March 16, 1954; that neither said Alex E. Wilson nor said William Steinberg participated in any of the aforesaid negotiations.

9. That affiant has been informed by said Sugarman Lumber Company that said Alex E. Wilson did not call Coastal Plywood & Timber Company to the attention of said Sugarman Lumber Company or any officer or authorized representative thereof, that said Alex E. Wilson did not procure Sugarman Lumber Company as a purchaser of assets of said Debtor and was not the procuring cause of the sale of the assets of the Debtor to said Sugarman Lumber Company, and that in fact said Alex E. Wilson never spoke to any officer or authorized representative of said Sugarman Lumber Company until after confirmation of the Second Plan of Reorganization, as amended.

10. That, in any event said Alex E. Wilson was not at any time authorized by affiant to represent or act for or on behalf of affiant or the Debtor herein, and affiant clearly and unequivocally stated to said Alex E. Wilson on many occasions throughout the period covered by the foregoing paragraphs of this affidavit that said Alex E. Wilson had no such authority; that said Alex E. Wilson on each such occasion represented to affiant that said Alex E. Wilson fully understood that he had no such authority and that he was representing, and would

be compensated by, the proponents of any offer or other proposal which he might submit; and that affiant relied upon said representations of said Alex E. Wilson in preparing and submitting his Second Plan of Reorganization of the Debtor for approval and confirmation herein.

/s/ FRED G. STEVENOT.

Subscribed and sworn to before me this 10th day of June, 1954.

[Seal] /s/ LUCIE M. REINCKE,
Notary Public in and for the City and County of
San Francisco, State of California. My commis-
sion expires November 19, 1954.

[Endorsed]: Filed June 11, 1954.

[Title of District Court and Cause.]

MEMORANDUM AND ORDER

Petitioner, Alex E. Wilson, filed this claim for the allowance of a real estate broker's commission on the sale of certain assets by Coastal Plywood & Timber Company, the debtor in these proceedings. The assets were sold pursuant to a plan of reorganization of the debtor, which was carried out in accordance with Chapter X of the National Bankruptcy Act. The trustee of the debtor in the reorganization proceedings, Fred G. Stevenot, resists petitioner's claim, contending: that petitioner is not within the class of persons designated by the National Bankruptcy Act as entitled to compensation;

that petitioner was not an agent of the trustee or of the debtor; that petitioner was a volunteer; that petitioner should have obtained court authorization in advance of rendering any services; that the absence of a written contract renders petitioner's claim subject to the defense of the statute of frauds; that petitioner cannot recover because he assumed positions of conflicting interests; and that petitioner's efforts did not benefit the bankrupt estate.

Petitioner's position is summarized on page two of his closing brief as follows:

“Clearly, these services rendered at the special instance and request of the Trustee, accepted by the Trustee, and of great benefit to the bankrupt estate, create an obligation to pay for these services which is recognized both at law and in proceedings under the Bankruptcy Act.”

It is true that petitioner rendered services, the services were accepted by the trustee, and the services were of real benefit to the bankrupt estate; but this Court finds that petitioner was a volunteer and therefore no obligation to pay for the services was created.

Petitioner and the trustee are in substantial agreement as to what occurred, but they differ as to the legal effect of their actions. The pertinent facts are these: The trustee became interested in selling all of the debtor's assets. Therefore he encouraged petitioner and other real estate brokers

to find a buyer for those assets. Petitioner became quite active in the search for prospective buyers, and the trustee cooperated with him in his efforts (by enabling petitioner to show the property to interested parties, etc.), but the trustee repeatedly warned petitioner that neither the trustee nor the debtor would pay any broker's commission, and that petitioner would have to look to the buyer for his compensation. There is a dispute as to whether the petitioner protested orally that he could not be expected to represent the buyer, and that he expected the trustee to treat him fairly, but there is no dispute on the fact that the trustee on several occasions told the petitioner that the bankrupt estate could not pay a commission without court authorization, and that petitioner would have to look to the buyer for his commission. The record further shows that there had been a prior partial sale of some assets of the bankrupt estate in the nature of timber cutting rights, which sale had been negotiated by the petitioner under the same warning, and that the trustee had asked the court to approve the payment of a real estate commission to petitioner, but that the trustee had followed this procedure upon the instance of the buyer. The court did approve the prior partial sale and the payment of a real estate commission to petitioner, and the commission was paid by the estate to petitioner from the proceeds of the sale.

Petitioner contends that an obligation to pay for his services arose by implication from the fact that the trustee accepted the benefit of the services un-

der those circumstances. The trustee admits that he was willing to do business with a reliable buyer produced by petitioner or any other real estate broker; but this does not necessarily imply a willingness to pay a broker's commission, especially in view of the fact that petitioner knew of the trustee's unwavering opposition to paying a commission to anyone. The case of *Gold v. South Side Trust Co.*, 3rd Cir., 179 Fed. 210, 213, cert. denied, 218 U. S. 671, involved a claim which arose under circumstances very similar to the claim presented here. The petitioner's claim was denied in that case because, there as here, "He was not only a volunteer, but a volunteer with warning." See also *In re Mt. Forest Fur Farms of America*, D. Mich., 62 F. Supp. 59, 70; *In re Porto Rican American Tobacco Co.*, 2d Cir., 117 F. 2d 599, 602; *In re Prudence Bonds Corp.*, 2d Cir., 122 F. 2d 258, 263.

The finding that petitioner was a volunteer disposes of petitioner's claim, and therefore it will not be necessary to consider in detail the other contentions made by the trustee. It should be noted, however, that there is respectable authority for the trustee's contention that petitioner cannot recover without showing that he obtained court authorization for his services before rendering them. *In re Grim*, E. D. Pa., 35 F. Supp. 15; *In re Equitable Office Building Corp.*, S. D. N. Y., 83 F. Supp. 531, 580. Petitioner answered this argument by relying on *Berman v. Palmetto Apartments Corp.*, 6th Cir., 153 F. 2d 192. In the *Berman* case the district court had denied the claim of a real estate broker for

an allowance for services rendered in connection with corporate reorganization proceedings. The court of appeals reversed, holding that it was not essential for the broker to show that there was a valid existing contract between him and the trustee for the payment of a broker's commission, and also holding that the broker had an equitable basis for his claim. But the Berman case is readily distinguishable from the case at bar. At page 193 of 153 F. 2d the court of appeals said:

“* * * [the broker] certainly had equitable if not legal rights, since at the behest of the Trustees and after diligent effort, he found the pur-
chaser.” (Emphasis supplied.)

In the case at bar petitioner admits that the trustee warned him that the trustee would not pay him a commission; in contrast to this, the trustees in the Berman case agreed to pay a commission to the broker, and provided for the payment of a commission in a written notice of the proposed sale which was circulated to all the holders of the trust certificates of the bankrupt. More than two-thirds of the certificate holders approved the sale including the provision for the broker's commission. This important difference makes the Berman case inapplicable to the case at bar.

To torture an agreement to pay a commission out of these facts would be to create an implied contract where none in fact existed. Equity can enforce the contract, whether express or implied, but equity cannot make the contract for the parties

where there was in fact no understanding upon which a contract could be founded.

Judgment, therefore, is awarded to the trustee with his costs, and counsel for the trustee is directed to prepare findings, conclusions and an order in conformity herewith.

Dated: January 26, 1955.

/s/ OLIVER J. CARTER,
United States District Judge.

[Endorsed]: Filed January 26, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF
LAW AND ORDER DENYING CLAIM OF
ALEX E. WILSON

There having been filed in the above-entitled proceedings a petition by Alex E. Wilson for the allowance of a real estate broker's commission on a sale of certain assets pursuant to a plan of reorganization of the above-named Debtor; and Fred G. Stevenot, the Trustee herein, having filed herein his written objections to the allowance of any such commission; and said petition and objections having come on regularly for hearing before the above entitled Court, Honorable Oliver J. Carter presiding, on the 21st day of June, 1954, the 6th day of July, 1954 and the 2nd day of August, 1954, petitioner being represented at said hearing by his counsel, Clifton Hildebrand, Esq., and Messrs. Files

& McMurchie, and the above-named Debtor being represented at said hearing by its counsel, Herbert Dudley, Esq., and the above-named Trustee being represented at said hearing by his counsel, Walter G. Olson, Esq., of the firm of Messrs. Orrick, Dahlquist, Herrington & Sutcliffe; and evidence, oral and documentary, having been introduced in support of said petition and in opposition thereto, and all parties interested having been heard; and the Court having heard and duly considered all the evidence and arguments of counsel and having considered the law and the facts, and being duly advised, now makes and files this, its Findings of Fact and Conclusions of Law.

Findings of Fact

The Court finds the following facts:

1. Petitioner's first contact with either the Debtor or the Trustee occurred in July, 1952, when he called upon the Trustee and stated to the Trustee that he had a buyer for certain timber contracts then owned by the Debtor. The Trustee advised petitioner that he was endeavoring to negotiate changes in these contracts which would enable the Debtor to take advantage of these contracts. The Trustee informed petitioner that in the event he determined that these contracts should be sold, neither the Trustee nor the Debtor would pay any commission on the sale and that any compensation to petitioner would have to be paid by the buyer of the contracts.

2. On August 19, 1952, Clarence L. Nielson sub-

mitted to the Trustee a proposal for the purchase of said contracts, which proposal was conditioned upon said Clarence L. Nielson being able to negotiate changes in said contracts satisfactory to him. This proposal was prepared by petitioner for said Clarence L. Nielson on the letterhead of petitioner. Said Clarence L. Nielson was not successful in negotiating the desired changes in the contracts and the Trustee therefore did not submit said proposal to the Court for approval. Thereafter, said Clarence L. Nielson and Amy K. Nielson, his wife, presented to the Trustee a new offer, dated October 11, 1952, to purchase said contracts for a gross price of \$100,000, which offer was subject to the express condition that the sum of \$5,000 be paid to petitioner out of such gross price. Following receipt of this offer, the Trustee and his counsel conferred with the said Nielsons and petitioner, at which time the Trustee objected to the condition imposed in the offer that petitioner be paid \$5,000 out of the gross price, and endeavored to induce the said Nielsons to eliminate this condition. The said Nielsons, however, refused to eliminate this condition and insisted that \$5,000 be paid to petitioner and that the offer be accepted immediately in the form submitted in order to avoid any further delay. The Trustee thereupon agreed to submit the offer of the said Nielsons to the Court, and thereafter filed a petition in these proceedings presenting said offer to this Court. In said petition, the Trustee fully advised this Court and all interested parties that said offer was conditioned upon the

payment to petitioner of \$5,000 of the the proceeds of said sale. Thereafter, on November 3, 1952, a hearing on said petition of the Trustee was held before the Court following notice to all creditors and stockholders of the Debtor, and on November 12, 1952, the Court issued its Order approving said offer of Clarence L. Nielson and his wife and authorizing the Trustee to consummate the sale in accordance with the terms of said offer.

3. Petitioner represented and acted on behalf of the said Nielsons in the above-described transaction and did not represent the Trustee or the Debtor. On August 9, 1952, prior to the sale of said contracts, the said Nielsons had entered into an agreement with petitioner in which they agreed to require the Debtor to pay petitioner's "costs" in connection with said sale, and further agreed to pay petitioner a brokerage fee for procuring said contracts for them. Pursuant to said agreement, the said Nielsons inserted in their offer to the Trustee the aforesaid condition that \$5,000 be paid to petitioner from the proceeds of the sale, and petitioner received said sum from said proceeds solely because of said condition. In addition, petitioner negotiated a loan on behalf of the said Nielsons, the proceeds of which were used to purchase said contracts of the Debtor.

4. During the period from July, 1952 to July, 1953 the Trustee endeavored to develop a plan of reorganization of the Debtor which would not involve the disposition of any assets of the Debtor and which would preserve for the stockholders their

interest in the Debtor's business and properties. On June 15, 1953, the Trustee filed herein his First Plan of Reorganization of the Debtor, which Plan did not contemplate the sale of any assets of the Debtor but, rather, contemplated the retention of all of its properties, the sale of additional shares of capital stock and the creation of a voting trust for the protection of creditors. In July, 1953, the Reconstruction Finance Corporation, the principal creditor of the Debtor, notified the Trustee that it would not accept said Plan and the Trustee then, for the first time, determined that it was necessary to sell the assets of the Debtor to avert foreclosure.

5. During the period from July, 1952 to July, 1953 a number of persons, including petitioner, called upon the Trustee and indicated that they were considering the development of a proposal or plan of reorganization of the Debtor. The Trustee furnished all such persons, including petitioner, with information concerning the Debtor and its properties and permitted them to inspect such properties. Petitioner was expressly informed by the Trustee, during said period from July, 1952 to July, 1953, that the Trustee was not interested in a sale of the Debtor's properties but was endeavoring to develop a plan of reorganization which would preserve for the Debtor's stockholders a participation in such properties and their operation. Moreover, the Trustee repeatedly notified the petitioner during said period that neither the Trustee nor the Debtor would employ any broker or pay any commission in connection with any plan of re-

organization, and that if petitioner endeavored to develop any plan, he must represent, and be compensated by, the proponents of such plan. Petitioner was further advised by the Trustee, on several occasions, that neither the Debtor nor the Trustee could pay a commission to petitioner without prior Court authorization and that petitioner would have to look to the buyer for his commission. During the latter part of 1952 and during 1953, petitioner called at the offices of the Trustee at various times, without invitation from the Trustee, and on such occasions the Trustee repeatedly and unequivocally notified petitioner that no broker would be employed or compensated by the Trustee or the Debtor.

6. On July 22, 1953, petitioner received from the Trustee a letter, which stated, insofar as is material here, as follows:

“The plan of reorganization which I have filed with the Court has not yet been passed upon by Judge Lemmon, and I will receive and consider any proposals which you may desire to submit on behalf of your clients. Of course, any plan which you may submit should be of the nature contemplated by Chapter X of the Bankruptcy Act. Moreover, as I have previously advised you, neither I nor Coastal Plywood & Timber Company may be obligated for any commissions payable in connection with such a plan, and any such commissions must be paid by the investors for whom you act.”

Said letter stated only what the Trustee had pre-

viously repeated verbally to the petitioner on numerous occasions over a long period of time. Shortly after July 22, 1953, petitioner called at the Trustee's office and acknowledged receipt of said letter but voiced no objection thereto.

7. On July 23, 1953 or July 24, 1953, the Trustee received from William Steinberg an offer, purportedly on behalf of J. J. Sugarman Co. of Los Angeles, California, to purchase all of the assets of the Debtor for the sum of \$3,750,000. At the time the Trustee received said offer, petitioner and said Steinberg advised the Trustee that petitioner was being compensated by said Steinberg. The Trustee refused to consider said offer submitted by said Steinberg and advised said Steinberg that he would require an offer of at least \$4,250,000. Thereupon, J. J. Sugarman Co. advised said Steinberg that it was not interested in a purchase of the assets of the Debtor, and said Steinberg began representing a Mr. Jamieson, who also evidenced an interest in a purchase of the assets of the Debtor. Said Steinberg represented said Jamieson from August 15, 1953 through the first week in October, 1953.

8. In connection with his representation of J. J. Sugarman Co. and, subsequently, Mr. Jamieson, said Steinberg obtained an offer from a Mr. Holm to repurchase a portion of the Debtor's timber from his clients. Mr. Holm was introduced to said Steinberg by petitioner.

9. On July 22, 1953, said Steinberg entered into an oral agreement with petitioner, which agreement

was confirmed by said Steinberg by a letter to petitioner dated August 25, 1953, whereby said Steinberg agreed to pay petitioner \$25,000 for petitioner's services in bringing the Debtor to his attention. Petitioner has also entered into an agreement with Mr. Holm, one of the ultimate purchasers of a portion of the Debtor's properties, whereby said Holm is to receive a portion of any amount which petitioner might recover from the Debtor on the claim herein denied.

10. In October, 1953, the Trustee entered into negotiations with N. Sugarman and B. Margolis for the sale of assets of the Debtor to Sugarman Lumber Company. The Trustee engaged in extensive negotiations with said Sugarman Lumber Company, which culminated in the presentation to the Trustee on December 12, 1953 of an offer by Sugarman Lumber Company to purchase the assets of the Debtor. Neither petitioner nor said Steinberg participated in these negotiations between the Trustee and said Sugarman Lumber Company. The offer of said Sugarman Lumber Company was thereafter incorporated by the Trustee as part of his Second Plan of Reorganization of the Debtor, filed on December 21, 1953.

11. On January 7, 1954, the Court entered its Order approving said Second Plan of Reorganization and directing that it be submitted to creditors and stockholders of the Debtor for their votes. On March 16, 1954, following the acceptance of said Plan in writing by more than two-thirds of each

class of creditors of the Debtor and more than a majority of the stockholders of the Debtor, the Court entered its Order confirming said Second Plan of Reorganization, as amended, and directed the Trustee to consummate said Plan. On April 16, 1954, the Trustee, pursuant to said Order, conveyed the assets of the Debtor to said Sugarman Lumber Company pursuant to said Second Plan of Reorganization, and, prior to the filing of petitioner's petition herein, the Trustee had taken substantially all of the remaining steps required for the consummation of said Plan. Said Sugarman Lumber Company resold a substantial portion of the assets purchased pursuant to said Plan to the aforesaid Mr. Holm and also resold portions of said assets to persons with whom the said Steinberg had previously negotiated.

12. Petitioner was clearly and unequivocally notified by Trustee, both verbally and in writing, before and repeatedly during the period of the alleged services for which petitioner seeks compensation, that neither the Debtor nor the Trustee would employ any broker or agent or pay any commission or compensation to any agent in connection with any plan or reorganization or sale. Petitioner never requested the Trustee to employ him as a broker, and never advised the Trustee that he expected or would seek compensation from the Debtor or the Trustee until May, 1954, after said Second Plan of Reorganization, including the sale to said Sugarman Lumber Company, had been consummated.

13. Neither the Second Plan of Reorganization nor any other instrument filed with the Court prior to the filing of petitioner's petition herein disclosed to the Court or to the creditors and stockholders of the Debtor that a commission or other compensation might be payable to petitioner or any other broker in connection with said Second Plan of Reorganization, or the sale to said Sugarman Lumber Company contemplated therein. The Court and the creditors and the stockholders of the Debtor were never advised, prior to the filing of petitioner's petition herein, that petitioner expected to receive a commission or other compensation from the Debtor. The Court approved and confirmed said Second Plan of Reorganization, and the creditors and stockholders of the Debtor submitted their binding acceptances of said Second Plan of Reorganization, in complete ignorance of the claim upon which petitioner now seeks to recover.

14. The Trustee relied upon his understanding with petitioner that petitioner was not representing the Trustee or the Debtor and would not receive any compensation from the Trustee or the Debtor, in presenting said Second Plan of Reorganization to the Court and to the creditors and stockholders of the Debtor for approval, and in consummating said Second Plan of Reorganization following such approval.

Conclusions of Law

From the foregoing Findings of Fact, the Court concludes, as a matter of law, that:

1. Petitioner is not entitled to any real estate

broker's commission or any other compensation whatsoever from the Trustee or the estate of the Debtor herein.

2. Neither the Trustee nor the Debtor entered into or offered to enter into any contract or agreement or understanding, express or implied, with petitioner for the employment of petitioner as a real estate broker or agent or employee of the Trustee or the Debtor, and neither the Trustee nor the Debtor agreed or offered to pay to petitioner any commission or other compensation in connection with any of the alleged services for which petitioner seeks compensation.

3. Petitioner was, at best, a volunteer with full warning, at all times, that neither the Trustee nor the Debtor would pay any broker's commission or other compensation in connection with any sale of the Debtor's assets or any other plan of reorganization of the Debtor.

4. In view of the foregoing conclusion that petitioner was a volunteer with full warning, petitioner's petition for allowance of compensation must be denied, and it is not necessary to consider the remaining contentions made by the Trustee.

5. In any event, petitioner's alleged services were neither approved nor authorized by, nor brought to the attention of, the Court in these proceedings, and therefore no compensation may be allowed for any such services.

6. Petitioner is entitled to take nothing by his

petition in these proceedings, and the Trustee is entitled to recover his costs herein.

Now, therefore, in accordance with the foregoing Findings of Fact and Conclusions of Law, it is hereby Ordered, Adjudged and Decreed that the petition of Alex E. Wilson, the petitioner herein, for allowance of a real estate broker's commission be and the same is hereby denied, and no commission or other compensation whatsoever is allowed to petitioner herein.

Dated: February, 1955.

.....

United States District Judge.

Acknowledgment of Service Attached.

[Endorsed]: Lodged February 3, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

There having been filed in the above-entitled proceedings a petition by Alex E. Wilson for the allowance of a real estate broker's commission on a sale of certain assets pursuant to a plan of reorganization of the above-named Debtor; and Fred G. Stevenot, the Trustee herein, having filed herein his written objections to the allowance of any such commission; and said petition and objections having come on regularly for hearing before the above entitled Court, Honorable Oliver J. Carter presid-

ing, on the 21st day of June, 1954, the 6th day of July, 1954, and the 2nd day of August, 1954, Petitioner being represented at said hearing by his counsel, Clifton Hildebrand, Esq., and Messrs. Files & McMurchie, and the above-named Debtor being represented at said hearing by its counsel, Herbert Dudley, Esq., and the above-named Trustee being represented at said hearing by his counsel, Walter G. Olson, Esq., of the firm of Messrs. Orrick, Dahlquist, Herrington & Sutcliffe; and evidence, oral and documentary, having been introduced in support of said petition and in opposition thereto, and all parties interested having been heard; and the Court having heard and duly considered all the evidence and arguments of counsel and having considered the law and the facts, and being duly advised, now makes and files this, its Findings of Fact and Conclusions of Law.

Findings of Fact

The Court finds the following facts:

1. That during the period from July, 1952, to July, 1953, the Trustee in this matter became interested in selling all of the assets of the Debtor, Coastal Plywood & Timber Company, and during this time consulted with various real estate brokers regarding the sale of these assets. One of these real estate brokers was the Petitioner, Alex E. Wilson, who had been sent to the Trustee by Mr. Sterling Carr, one of the Attorneys for the Trustee.

2. That Petitioner was a duly licensed real estate broker.

3. That the Trustee encouraged Petitioner, and other real estate brokers, in their efforts to find a buyer for the assets of Debtor. That the Trustee co-operated with Petitioner in his efforts by enabling Petitioner to show the property to interested parties and by supplying Petitioner with timber cruises, financial statements and other information to assist him in finding a purchaser.

4. That Petitioner became quite active in the search for a prospective buyer, and devoted a good deal of his time, effort, and money in this search. Petitioner discussed his efforts at various times with the Trustee and with Mr. Sterling Carr, one of the attorneys for the Trustee, and submitted various letters to the Trustee discussing his efforts.

5. That Mr. Sterling Carr, one of the attorneys for the Trustee, encouraged Petitioner in continuing his efforts to find a purchaser for the assets of Debtor and assured Petitioner that the Court would protect him in his compensation if he sold these assets, and if his services were of benefit to this bankrupt estate.

6. That Petitioner did render services to the Debtor's estate by interesting William Steinberg, N. Sugarman, Barney Margolis, J. J. Sugarman Company, and others in the purchase of the assets of the Debtor, and in introducing these interested parties to the Trustee.

7. That on July 22, 1953, the Trustee received from William Steinberg an offer to purchase all of

the assets of Debtor for the sum of \$3,750,000.00. This letter, insofar as is material herein, was as follows:

“July 22, 1953”

“Coastal Plywood and Timber Company
and Fred G. Stevenot, Acting Trustee
for Coastal Plywood and Timber Company
300 Montgomery Street,
San Francisco, California

Re: No. 12223 United States District Court.
Gentlemen:

On behalf of J. J. Sugarman Co. of Los Angeles, California, I am authorized to make an offer of purchase for them of all of the assets of the Coastal Plywood and Timber Company, a corporation, upon the terms and conditions hereinafter set forth.

The Coastal Plywood and Timber Company, having filed its petition for an arrangement under the provisions of Chapter 11, shall assign, transfer and convey to J. J. Sugarman Co. all of its assets hereinafter described, so as to enable it to effectuate a plan for arrangement under said Chapter 11 as follows:

1. That the total purchase price is \$3,750,000.00 for all of the net assets of Coastal Plywood and Timber Company. * * *

That said Trustee did not accept said offer submitted by William Steinberg on behalf of J. J. Sugarman Company.

8. In October 1953, the Trustee entered into further negotiations with N. Sugarman and B. Mar-

golis for the sale of the assets of the Debtor to Sugarman Lumber Company. These negotiations with said Sugarman Lumber Company culminated in the presentation to the Trustee, on December 12, 1953, of an offer by Sugarman Lumber Company to purchase the assets of the Debtor. The offer of said Sugarman Lumber Company was thereafter incorporated by the Trustee as part of his Second Plan of Reorganization of the Debtor, filed on December 21, 1953.

9. On January 7, 1954, the Court entered its Order approving said Second Plan of Reorganization and directing that it be submitted to creditors and stockholders of the Debtor for their votes. On March 16, 1954, following the acceptance of said Plan in writing by more than two-thirds of each class of creditors of the Debtor and more than a majority of the stockholders of the Debtor, the Court entered its order confirming said Second Plan of Reorganization, as amended, and directed the Trustee to consummate said plan.

10. That said assets of Debtor were sold to Sugarman Lumber Company pursuant to said Second Plan of Reorganization as amended for the net sum of \$4,132,000.00.

11. That said sale of said assets and the efforts of Petitioner, Alex E. Wilson, in interesting N. Sugarman, B. Margolis and others in the purchase of said assets and in introducing these interested parties to the Trustee were of real benefit to the bankrupt estate.

12. That said services of Petitioner, Alex E. Wilson, in interesting N. Sugarman, B. Margolis, and others in the purchase of said assets, and in introducing these interested parties to the Trustee were accepted by the Trustee, and the Trustee continued to negotiate with N. Sugarman and B. Margolis until said sale to Sugarman Lumber Company was consummated as aforesaid.

13. That Sugarman Lumber Company re-sold a substantial portion of the assets so purchased by them pursuant to said Second Plan to Fred Holm and others at a substantial profit over the purchase price paid by Sugarman Lumber Company.

14. That Petitioner was instrumental in negotiating these resales by Sugarman Lumber Company, and that Sugarman Lumber Company would not have offered to purchase the assets of Debtor as aforesaid unless these resales had been negotiated by Petitioner.

15. That the Trustee on several occasions told the Petitioner that he would have to look to the Buyer for his commission.

16. That Petitioner protested orally that he could not be expected to represent the Buyer, and that he expected the Trustee to treat him fairly.

17. That on July 22, 1953, the same day that he received said offer from William Steinberg, on behalf of J. J. Sugarman Co., the Trustee mailed to Petitioner a letter which stated as follows:

"Dear Mr. Wilson:

"I wish to thank you for your letter of July 17th advising me of your current efforts to develop a plan of reorganization of Coastal Plywood & Timber Company.

"The plan of reorganization which I have filed with the Court has not yet been passed upon by Judge Lemmon, and I will receive and consider any proposals which you may desire to submit on behalf of your clients. Of course, any plan which you may submit should be of the nature contemplated by Chapter X of the Bankruptcy Act. Moreover, as I have previously advised you, neither I nor Coastal Plywood & Timber Company may be obligated for any commission payable in connection with such a plan, and any such commissions must be paid by the investors for whom you act."

Said letter stated for the first time in writing what the Trustee had previously stated verbally to Petitioner on various occasions.

18. That Petitioner was a mere volunteer who had been warned that the Trustee was unwaveringly opposed to paying a broker's commission to anyone, and who had been warned that he must obtain his compensation from the purchaser.

19. That Petitioner, Alex E. Wilson, did not obtain Court authorization for his services before rendering them, and the Trustee on several occasions told the Petitioner that the Bankrupt estate

could not pay a commission without Court authorization.

20. That Petitioner has not received any commission or compensation from anyone for his efforts in interesting N. Sugarman, Barney Margolis and Sugarman Lumber Company in the purchase of the assets of Debtor.

21. That there had been a prior partial sale to Clarence Nielson of some of the assets of the bankrupt estate in the nature of timber cutting rights for the total sum of \$100,000.00 which sale had been negotiated by the Petitioner under the same warning from the Trustee that Petitioner would have to look to the Buyer for his commission and that the bankrupt estate could not pay commission without prior court authorization. That the Trustee had asked the Court to approve the payment of a real estate commission to Petitioner, but that the Trustee had followed this procedure upon the instance of the Buyer. That this Court did approve the prior partial sale and the payment of a real estate commission to Petitioner in the sum of \$5,000.00 by its order of November 12, 1952. That said real estate commission was paid to Petitioner by a check of the Debtor, Coastal Plywood & Timber Company, from the proceeds of the sale.

Conclusions of Law

From the foregoing Findings of Fact, the Court concludes, as a matter of law, that:

1. Petitioner is not entitled to any real estate

broker's commission or any other compensation whatsoever from the Trustee or the estate of the Debtor herein.

2. Neither the Trustee nor the Debtor entered into or offered to enter into any contract or agreement or understanding, express or implied, with Petitioner for the employment of Petitioner as a real estate broker or agent or employee of the Trustee or the Debtor, and neither the Trustee nor the Debtor agreed or offered to pay to Petitioner any commission or other compensation in connection with any of the alleged services for which Petitioner seeks compensation.

3. Petitioner was, at best, a volunteer with full warning, at all times, that neither the Trustee nor the Debtor would pay any broker's commission or other compensation in connection with any sale of the Debtor's assets or any other plan of reorganization of the Debtor.

4. In view of the foregoing conclusion that Petitioner was a volunteer with full warning, Petitioner's petition for allowance of compensation must be denied, and it is not necessary to consider the remaining contentions made by the Trustee.

5. In any event, Petitioner's alleged services were neither approved nor authorized by, nor brought to the attention of, the Court in these proceedings, and therefore no compensation may be allowed for any such services.

6. Petitioner is entitled to take nothing by his

petition in these proceedings, and the Trustee is entitled to recover his costs herein.

Dated: February, 1955.

.....

United States District Judge.

[Endorsed]: Lodged February 7, 1955.

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION FOR
FURTHER CONSIDERATION, FOR OR-
DER THAT NO JUDGMENT HAS BEEN
ENTERED, TO VACATE JUDGMENT, TO
SETTLE FINDINGS, AND TO ENTER
JUDGMENT

To: Coastal Plywood & Timber Company, Debtor corporation, and Herbert E. Dudley, its attorney, and to Fred G. Stevenot, Trustee, and Orrick, Dahlquist, Herrington & Sutcliffe, his attorneys; and each thereof:

You, and each of you, will please take notice that on Monday, January 9, 1956, at the hour of 10:00 o'clock a.m., in the Courtroom of the Honorable Judge Oliver J. Carter in the Post Office Building, 7th and Mission Streets, City of San Francisco, State of California, the Petitioner, Alex E. Wilson, will move the Court as follows:

(1) for further consideration and argument of this matter on the basis of recent decisions rendered since the trial of this matter as set forth in the

Memorandum of October 18, 1955, and subsequent letters;

(2) for its Order that the filing of the Memorandum and Order of January 26, 1955, did not constitute an entry of Judgment in this matter;

(3) for its Order Vacating any Judgment that may have been entered in this matter under Rule 60(b), Federal Rules of Civil Procedure, on the grounds of mistake, inadvertance, surprise or excusable neglect;

(4) for a settlement of the Findings of Fact and Conclusions of Law which have been lodged with the Court under Rule 5, Rules of Practice;

(5) for the entry of Judgment in this matter.

Said motion will be made on the following grounds:

(1) That no judgment has been entered in this matter, and that this matter is now pending before this Court. That recent decisions, rendered since the trial of this matter which have a direct bearing on the issues involved in this case, have come to Petitioner's attention as set forth in the Memorandum of October 18, 1955, and subsequent letters. Petitioner desires to bring said cases to the attention of th Court prior to its decision in this matter.

(2) That on January 26, 1955, the Court filed a Memorandum and Order wherein counsel for the trustee was directed to prepare findings, conclusions and an order in conformity therewith. That attorneys for the trustee in their letter to the Court

dated October 28, 1955, contend that said Memorandum and Order constituted the entry of Judgment in this matter. That this contention is disputed by your Petitioner, and is not in accord with the records and files in this action, and is not in accord with Rule 5(d), Rules of Practice, District Court of the United States, Northern District of California. That your Petitioner seeks an order that no judgment has been entered.

(3) That in the event the Court should determine that the filing of the Memorandum and Order of January 26, 1955, did constitute an entry of Judgment, that said entry of Judgment be set aside under Rule 60(b), Federal Rules of Practice and Procedure, on the grounds of mistake, inadvertence, surprise or excusable neglect, as shown by Petitioner's letter of November 3, 1955, and the Affidavit filed herewith.

(4) That on February 3, 1955, attorneys for the trustee lodged formal Findings of Fact and Conclusions of Law under said Rule 5(d). That on February 7, 1955, attorneys for Petitioner lodged Alternative Findings of Fact and Conclusions of Law under said Rule 5(d). That said Findings of Fact and Conclusions of Law have never been settled by the Court as provided for in said Rule 5(d).

(5) That on February 8, 1955, attorneys for the Trustee lodged with the Court under Rule 5(d) a formal Judgment and Order. That no formal Judgment or Order has been signed or filed by the Court in this matter, and no Judgment has been entered.

Each of said motions will be based on this Notice of Motion, the Affidavit of Donald W. McMurchie, served herewith, all letters written to the Court, additional Authorities to be cited on the hearing of this motion, and upon all records, papers and files in this action.

Dated: December 23, 1955.

FILES & McMURCHIE,
/s/ By DONALD W. McMURCHIE,
Attorneys for Petitioner.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed December 23, 1955.

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION FOR
FURTHER CONSIDERATION, FOR OR-
DER THAT NO JUDGMENT HAS BEEN
ENTERED, TO VACATE JUDGMENT, TO
SETTLE FINDINGS, AND TO ENTER
JUDGMENT

State of California
County of Sacramento—ss.

Donald W. McMurchie, being first duly sworn, deposes and says: That he is one of the Attorneys for Petitioner in the above entitled matter; that since the trial of this matter decisions having a direct bearing on the issues involved in this case have come to the attention of Petitioner. That among these cases are the cases of Palmer vs.

Wahler 133 ACA 932 (Advance Sheets for July 1, 1955); and the case of Desny vs. Wilder 134 ACA 442 (Advance Sheets of July 29, 1955). That these cases, together with other authorities have been presented to the Court by way of a Memorandum filed October 18, 1955, and by a letter to the Court dated December 9, 1955. That Petitioner also have additional Authorities which they desire to call to the attention of the Court by way of oral argument.

That by a letter to the Court from the Attorneys for the Trustee dated October 28, 1955, the Trustee raises the contention that the Memorandum and Order filed by the Court on January 26, 1955, constituted an Entry of Judgment under Rule 58 of the Federal Rules. That Attorneys for Petitioner dispute this contention as set forth by their letter to the Court dated November 3, 1955.

That this order of January 26, 1955, specifically provides in the last paragraph thereof as follows:

“Counsel for the Trustee is directed to prepare Findings, Conclusions and an Order in conformity herewith.”

That this is a clear statement by the Court that this Memorandum and Order was not the judgment of the Court but that formal Findings and Conclusions and a formal order were to be prepared and submitted to the Court for signature.

That shortly after the filing of this Memorandum and Order Affiant inquired of the Court in a telephone conversation as to whether said Memorandum

and Order could, in any way, be construed as a judgment under Rule 58, Federal Rules of Civil Procedure. Counsel was informed that it was not the Court's intention to enter judgment upon the filing of this Memorandum, and that this intention was made clear by the provision of the Memorandum above quoted directing preparation of formal Findings and Conclusions and a formal order to be submitted to the Court. That your Affiant also talked with the Clerk of the Court in regard to the effect of the filing of this Memorandum and Order of January 26, 1955, and was informed by the Clerk that it did not constitute the judgment in this matter and that judgment could be entered only after the Court had settled and signed formal Findings of Fact and Conclusions of Law and had signed a formal judgment pursuant to Rule 5(d) of the Rules of Practice.

That upon the filing of this Memorandum and Order the Clerk entered a notation upon the Civil Docket as follows:

“Order Judgment be awarded to Trustee with costs upon Findings of Fact and Conclusions of Law and Order.”

That this notation does not constitute an entry of Judgment, but clearly provides that judgment will be entered only upon Findings of Fact and Conclusions of Law and Order. That the Clerk has not served a Notice of Entry of Judgment as required by Section 77(e) of the Federal Rules of Civil Procedure, and Attorneys for the Pettitioner have never

received a Notice of Entry of Judgment from any source.

That on February 3, 1955, Attorneys for the Trustee submitted to the Court for signature formal and extensive Findings of Fact and Conclusions of Law. These Findings were first submitted to your affiant for approval as to form as provided in Rule 5(d) Rules of Practice, District Court of the United States, Northern District of California. That your affiant refused to approve these Findings as provided in Rule 5(d). That on February 7, 1955, Attorneys for Petitioner lodged alternative Findings of Fact and Conclusions of Law as provided in Rule 5(d). That on February 8, 1955, Attorneys for the Trustee mailed to the Court a formal Judgment and Order and directed that said Judgment and Order be lodged with the Court under Rule 5(d). That no further hearings have been had in this matter, that Findings of Fact and Conclusions of Law have not been settled or signed by the Court and that no judgment has been signed or filed by the Court.

That your affiant was not aware of any contention by any party that the Memorandum of January 26, 1955, constituted an entry of Judgment in this matter until receipt of a copy of a letter from Attorneys for the Trustee dated October 28, 1955, in which this contention was first raised.

That the action of all parties to this proceeding prior to October 28, 1955, was consistent only with the belief of your affiant that no judgment had been

entered. Findings of Fact and Conclusions of Law and a formal Judgment had been lodged with the Court under Rule 5(d), Rules of Practice, Northern District of California, by both parties. Memorandums of Points and Authorities had been filed by both parties in support of their respective proposed Findings of Fact, and affiant was informed and believed that no Judgment could be entered until these Findings had been settled by the Court as required by Rule 5(d).

That Petitioner contends that the filing of the Memorandum and Order of January 26, 1955, did not constitute an Entry of Judgment. If said Memorandum and Order did constitute entry of judgment, then judgment has been entered by mistake, and due to the inadvertence, surprise and excusable neglect of Attorneys for Petitioner as shown by this affidavit, and any such entry of judgment should be vacated and set aside under Rule 60(b), Federal Rules of Civil Procedure, in order that the time for new trial motion and appeal can begin running from a new date of entry of judgment and in order that Attorneys for Petitioner may protect the rights of their client and may be notified of the date upon which Judgment is entered.

Wherefore your affiant prays that this Court enter its Orders as requested in the Notice of Motion and Motion which has been filed herewith.

FILES & McMURCHIE,
/s/ By DONALD W. McMURCHIE,
Attorneys for Petitioner.

Subscribed and sworn to before me this 23rd day of December, 1955.

[Seal] /s/ THOMAS T. FILES,
Notary Public in and for said County and State.

[Endorsed]: Filed December 23, 1955.

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES ON NOTICE OF MOTION

Rule 7(b), Federal Rules of Civil Procedure.

Rule 52, Federal Rules of Civil Procedure.

Rule 58, Federal Rules of Civil Procedure.

Rule 60, Federal Rules of Civil Procedure.

Rule 5, Rules of Practice, District Court of the United States, Northern District of California.

For the proposition that until a Judgment is entered it is under the control of the Court and may be altered, changed or another judgment substituted therefor different from that first announced:

Phillips vs. Phillips, 41 Cal. App. (2d) 869, 873.

DeCoe vs. Johnson, 54 Cal. App. 592, 604.

Healy vs. Pennsylvania R.R., 181 Fed. (2d) 934.

For the proposition that a Judgment entered by mistake, inadvertence, surprise or excusable neglect should be vacated by the Court in order to again

commence running of time for new trial motion and appeal:

Commercial Credit Corp. vs. U. S., 175 Fed. (2d) 905.

Dated: December 23, 1955.

Respectfully submitted,

FILES & McMURCHIE,
/s/ By DONALD W. McMURCHIE.

[Endorsed]: Filed December 23, 1955.

[Title of District Court and Cause.]

MEMORANDUM ON MOTION FOR RECONSIDERATION

Petitioner seeks reconsideration of the Court's memorandum and order disallowing his claim for a real estate commission against the debtor estate. He asks the Court either to imply a contract from the conduct of the trustee, or to permit him to recover in quasi-contract for the reasonable value of his services.

The answer to the request to find an implied contract is found in the facts, which will not permit the implication of a contract as shown in the previous memorandum. The thrust of petitioner's argument is that the conduct of the trustee is the basis for implying a contract. The Court has found and petitioner admits that the trustee expressly declared that the estate would not pay petitioner a commission. This precludes the declaration of a

contract by implication because it negatives conduct from which a contract could be implied as a matter of fact.

In support of this theory of recovery, petitioner relies heavily upon the recent California case of *Desney v. Wilder*, 46 C. 2d 715. The facts of the *Desney* case invited the court to discuss at length the law of implied-in-fact contracts in California. Citing many authorities, the court merely reaffirmed the principle that the parties may incur contractual obligations by their conduct as well as express words, if their conduct is consistent with an unspoken agreement.

Petitioner places most emphasis on the contention that he is entitled to recover in quasi-contract. His brief contains extracts from many discussions upon this theory of recovery, the substance of which is this: When one person has rendered services which have accrued to the benefit of another, the law raises an implied promise to pay for them upon the equitable principle that one person should not be unjustly enriched by another's labors. The promise implied here is fictitious, and is imposed by law without reference to, and sometimes in frustration of their intention.

27 Cal. Jur. 198, 199; 5 Cal. Jur. (2d) 528; 7 Corpus Juris Secundum 111; 12 Am. Jur. 502; 12 Cal. Jur. (2d) 191; 5 Cal. Jur. (2d) 526.

Because these authorities emphasize that the doctrine is grounded upon equitable principles, the petitioner's brief contains many authorities demon-

strating that the Court of Bankruptcy has "equitable powers of a wide sweep" in passing upon the allowance and disallowance of claims. It is significant, however, that none of the bankruptcy cases cited were dealing with a recovery based upon the theory of quasi-contract.

Defendant also urges application of a line of cases which support a quasi-contractual recovery for services rendered whenever the defendant has made material representations to the plaintiff inducing the services, whether the representations were knowingly false or innocent. (Rest. of Restitution §40.)

This argument is asserted upon the basis of the trustee's conduct in the Nielson transaction coupled with Carr's statements as constituting a representation that Wilson would be paid by the trustee. It, therefore, assumes:

1. That Wilson was justified in believing, by reason of those representations, that trustee would pay him despite what trustee had said;
2. That such belief was what induced him to search out and bring the buyer to the seller; and
3. That Carr's representations were binding on the trustee. It is doubtful that they are.

Recently the case of *Newport v. Sampsell*, 233 F. (2d) 944, (C. A. 9, June 5, 1956), passed upon the ability of a trustee in bankruptcy to estop the estate by his representations, and the court said:

"But the difficulty is that the trustee draws

his power from the roots of the Bankruptcy Act. His powers are limited. 11 U.S.C.A. §75. It is not for him to estop an estate, and thereby creditors, out of a substantial part of its assets.”

If the estate could not be bound, or estopped by the representations of the trustee, it would seem that a fortiori, his agent would be unable to do so.

In support of his quasi-contractual theory generally, without alluding to the representations made, petitioner also relies heavily upon Irving-Austin Bldg. Corp., 100 F. (2d) 574. This decision contains a statement which lends itself to petitioner's claim, to-wit:

“Benefit to the estate, and the amount of the benefit, are the criteria by which the value of such services should be measured, where no employment by the Court or Trustee exists.”

It loses its impact, however, upon the discovery that the court is talking about allowable compensation to attorneys for creditors in a bankruptcy proceeding, which compensation is expressly provided for by 11 U.S.C.A. §643 (Chapter on Bankruptcy, Reorganizations, Attorneys for Creditors). The case is perhaps good authority for measuring allowable compensation for one who has benefited the bankrupt estate but does not purport to define under what circumstances a claimant may recover compensation from a bankrupt estate.

The bulk of the petitioner's argument for a re-

consideration is devoted to the contention that the Court should permit him recovery in quasi-contract for services rendered; all the authorities agree that quasi-contract is grounded upon equitable principles; ultimately then, the merit of the petitioner's argument comes to rest upon this: Should his claim, in good conscience, and because of the great benefit he conferred upon the estate, be allowed?

Here, again, the facts preclude a favorable answer to petitioner. When petitioner performed the services for the estate he knew of the trustee's announced policy that the estate would not pay any real estate commission. He knew that he was expected to get his commission from the buyer, which he tried to do before making a claim against the estate. This places the petitioner in the position of being a volunteer rather than one who has innocently rendered services in the good faith belief that he would be compensated for those services. From the very beginning of his dealings with the estate petitioner was on notice that the estate would not pay a commission. Although he says he did not accept the trustee's statement in this respect, and that he relied on subsequent conduct of the trustee, the attorney for the trustee and the estate, petitioner by his admitted attempts to secure his commission from the buyer, shows that he performed services for the estate as a volunteer, and not in reliance upon the duty of the estate to pay for the reasonable value of the services rendered.

The motion to reconsider is denied.

Dated: March 14, 1957.

/s/ OLIVER J. CARTER,
United States District Judge.

[Endorsed]: Filed March 14, 1957.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF
LAW AND ORDER DENYING CLAIM OF
ALEX E. WILSON

There having been filed in the above-entitled proceedings a petition by Alex E. Wilson for the allowance of a real estate broker's commission on a sale of certain assets pursuant to a plan of reorganization of the above-named Debtor; and Fred G. Stevenot, the Trustee herein, having filed herein his written objections to the allowance of any such commission; and said petition and objections having come on regularly for hearing before the above entitled Court, Honorable Oliver J. Carter presiding, on the 21st day of June, 1954, the 6th day of July, 1954 and the 2nd day of August, 1954, petitioner being represented at said hearing by his counsel, Clifton Hildebrand, Esq., and Messrs. Files & McMurchie, and the above-named Debtor being represented at said hearing by its counsel, Herbert Dudley, Esq., and the above-named Trustee being represented at said hearing by his counsel, Walter G. Olson, Esq., of the firm of Messrs. Orrick, Dahlquist, Herrington & Sutcliffe; and evidence, oral and documentary, having been introduced in sup-

port of said petition and in opposition thereto, and all parties interested having been heard; and the Court having heard and duly considered all the evidence and arguments of counsel and having considered the law and the facts, and being duly advised, now makes and files this, its Findings of Fact and Conclusions of Law.

Findings of Fact

The Court finds the following facts:

1. Petitioner's first contact with either the Debtor or the Trustee occurred in July, 1952, when he called upon the Trustee and stated to the Trustee that he had a buyer for certain timber contracts then owned by the Debtor. The Trustee advised petitioner that he was endeavoring to negotiate changes in these contracts which would enable the Debtor to take advantage of these contracts. The Trustee informed petitioner that in the event he determined that these contracts should be sold, neither the Trustee nor the Debtor would pay any commission on the sale and that any compensation to petitioner would have to be paid by the buyer of the contracts.

2. On August 19, 1952, Clarence L. Nielson submitted to the Trustee a proposal for the purchase of said contracts, which proposal was conditioned upon said Clarence L. Nielson being able to negotiate changes in said contracts satisfactory to him. This proposal was prepared by petitioner for said Clarence L. Nielson on the letterhead of petitioner. Said Clarence L. Nielson was not successful in nego-

tiating the desired changes in the contracts and the Trustee therefore did not submit said proposal to the Court for approval. Thereafter, said Clarence L. Nielson and Amy K. Nielson, his wife, presented to the Trustee a new offer, dated October 11, 1952, to purchase said contracts for a gross price of \$100,000, which offer was subject to the express condition that the sum of \$5,000 be paid to petitioner out of such gross price. Following receipt of this offer, the Trustee and his counsel conferred with the said Nielsons and petitioner, at which time the Trustee objected to the condition imposed in the offer that petitioner be paid \$5,000 out of the gross price, and endeavored to induce the said Nielsons to eliminate this condition. The said Nielsons, however, refused to eliminate this condition and insisted that \$5,000 be paid to petitioner and that the offer be accepted immediately in the form submitted in order to avoid any further delay. The Trustee thereupon agreed to submit the offer of the said Nielsons to the Court, and thereafter filed a petition in these proceedings presenting said offer to this Court. In said petition, the Trustee fully advised this Court and all interested parties that said offer was conditioned upon the payment to petitioner of \$5,000 of the proceeds of said sale. Thereafter, on November 3, 1952, a hearing on said petition of the Trustee was held before the Court following notice to all creditors and stockholders of the Debtor, and on November 12, 1952, the Court issued its Order approving said offer of Clarence L. Nielson and his wife and authorizing the Trustee

to consummate the sale in accordance with the terms of said offer.

3. Petitioner represented and acted on behalf of the said Nielsons in the above-described transaction and did not represent the Trustee or the Debtor. On August 9, 1952, prior to the sale of said contracts, the said Nielsons had entered into an agreement with petitioner in which they agreed to require the Debtor to pay petitioner's "costs" in connection with said sale, and further agreed to pay petitioner a brokerage fee for procuring said contracts for them. Pursuant to said agreement, the said Nielsons inserted in their offer to the Trustee the aforesaid condition that \$5,000 be paid to petitioner from the proceeds of the sale, and petitioner received said sum from said proceeds solely because of said condition. In addition, petitioner negotiated a loan on behalf of the said Nielsons, the proceeds of which were used to purchase said contracts of the Debtor.

4. During the period from July, 1952 to July, 1953 the Trustee endeavored to develop a plan of reorganization of the Debtor which would not involve the disposition of any assets of the Debtor and which would preserve for the stockholders their interest in the Debtor's business and properties. On June 15, 1953, the Trustee filed herein his First Plan of Reorganization of the Debtor, which Plan did not contemplate the sale of any assets of the Debtor but, rather, contemplated the retention of all of its properties, the sale of additional shares

of capital stock and the creation of a voting trust for the protection of creditors. In July, 1953, the Reconstruction Finance Corporation, the principal creditor of the Debtor, notified the Trustee that it would not accept said Plan and the Trustee then, for the first time, determined that it was necessary to sell the assets of the Debtor to avert foreclosure.

5. During the period from July, 1952 to July, 1953 a number of persons, including petitioner, called upon the Trustee and indicated that they were considering the development of a proposal or plan of reorganization of the Debtor. The Trustee furnished all such persons, including petitioner, with information concerning the Debtor and its properties and permitted them to inspect such properties. Petitioner was expressly informed by the Trustee, during said period from July, 1952 to July, 1953, that the Trustee was not interested in a sale of the Debtor's properties but was endeavoring to develop a plan of reorganization which would preserve for the Debtor's stockholders a participation in such properties and their operation. Moreover, the Trustee repeatedly notified the petitioner during said period that neither the Trustee nor the Debtor would employ any broker or pay any commission in connection with any plan of reorganization, and that if petitioner endeavored to develop any plan, the must represent, and be compensated by, the proponents of such plan. Petitioner was further advised by the Trustee, on several occasions, that neither the Debtor nor the Trustee could pay

a commission to petitioner without prior Court authorization and that petitioner would have to look to the buyer for his commission. During the latter part of 1952 and during 1953, petitioner called at the offices of the Trustee at various times, without invitation from the Trustee, and on such occasions the Trustee repeatedly and unequivocally notified petitioner that no broker would be employed or compensated by the Trustee or the Debtor.

6. On July 22, 1953, petitioner received from the Trustee a letter, which stated, insofar as is material here, as follows:

“The plan of reorganization which I have filed with the Court has not yet been passed upon by Judge Lemmon, and I will receive and consider any proposals which you may desire to submit on behalf of your clients. Of course, any plan which you may submit should be of the nature contemplated by Chapter X of the Bankruptcy Act. Moreover, as I have previously advised you, neither I nor Coastal Plywood & Timber Company may be obligated for any commissions payable in connection with such a plan, and any such commissions must be paid by the investors for whom you act.”

Said letter stated only what the Trustee had previously repeated verbally to the petitioner on numerous occasions over a long period of time. Shortly after July 22, 1953, petitioner called at the Trustee's office and acknowledged receipt of said letter but voiced no objection thereto.

7. On July 23, 1953 or July 24, 1953, the Trustee received from William Steinberg an offer, purportedly on behalf of J. J. Sugarman Co. of Los Angeles, California, to purchase all of the assets of the Debtor for the sum of \$3,750,000. At the time the Trustee received said offer, petitioner and said Steinberg advised the Trustee that petitioner was being compensated by said Steinberg. The Trustee refused to consider said offer submitted by said Steinberg and advised said Steinberg that he would require an offer of at least \$4,250,000. Thereupon, J. J. Sugarman Co. advised said Steinberg that it was not interested in a purchase of the assets of the Debtor, and said Steinberg began representing a Mr. Jamieson, who also evidenced an interest in a purchase of the assets of the Debtor. Said Steinberg represented said Jamieson from August 15, 1953 through the first week in October, 1953.

8. In connection with his representation of J. J. Sugarman Co. and, subsequently, Mr. Jamieson, said Steinberg obtained an offer from a Mr. Holm to repurchase a portion of the Debtor's timber from his clients. Mr. Holm was introduced to said Steinberg by petitioner.

9. On July 22, 1953, said Steinberg entered into an oral agreement with petitioner, which agreement was confirmed by said Steinberg by a letter to petitioner dated August 25, 1953, whereby said Steinberg agreed to pay petitioner \$25,000 for petitioner's services in bringing the Debtor to his attention. Peti-

tioner has also entered into an agreement with Mr. Holm, one of the ultimate purchasers of a portion of the Debtor's properties, whereby said Holm is to receive a portion of any amount which petitioner might recover from the Debtor on the claim herein denied.

10. In October, 1953, the Trustee entered into negotiations with N. Sugarman and B. Margolis for the sale of assets of the Debtor to Sugarman Lumber Company. The Trustee engaged in extensive negotiations with said Sugarman Lumber Company, which culminated in the presentation to the Trustee on December 12, 1953 of an offer by Sugarman Lumber Company to purchase the assets of the Debtor. The offer of said Sugarman Lumber Company was thereafter incorporated by the Trustee as part of his Second Plan of Reorganization of the Debtor, filed on December 21, 1953.

11. On January 7, 1954, the Court entered its Order approving said Second Plan of Reorganization and directing that it be submitted to creditors and stockholders of the Debtor for their votes. On March 16, 1954, following the acceptance of said Plan in writing by more than two-thirds of each class of creditors of the Debtor and more than a majority of the stockholders of the Debtor, the Court entered its Order confirming said Second Plan of Reorganization, as amended, and directed the Trustee to consummate said Plan. On April 16, 1954, the Trustee, pursuant to said Order, conveyed the assets of the Debtor to said Sugarman

Lumber Company pursuant to said Second Plan of Reorganization, and, prior to the filing of petitioner's petition herein, the Trustee had taken substantially all of the remaining steps required for the consummation of said Plan. Said Sugarman Lumber Company resold a substantial portion of the assets purchased pursuant to said Plan to the aforesaid Mr. Holm and also resold portions of said assets to persons with whom the said Steinberg had previously negotiated.

12. Said sale of said assets and the efforts of Petitioner in interesting N. Sugarman, B. Margolis and others in the purchase of said assets and in introducing these interested parties to Trustee were of real benefit to the bankrupt estate.

13. Petitioner was instrumental in negotiating the resales by Sugarman Lumber Company, and Suger Lumber Company would not have offered to purchase the assets of Debtor as aforesaid unless these resales had been negotiated by Petitioner.

14. Petitioner was clearly and unequivocally notified by Trustee, both verbally and in writing, before and repeatedly during the period of the alleged services for which petitioner seeks compensation, that neither the Debtor nor the Trustee would employ any broker or agent or pay any commission or compensation to any agent in connection with any plan or reorganization or sale. Trustee on several occasions told Petitioner he would have to look to Buyer for his commission. Petitioner protested orally that he could not be expected to

represent Buyer, and that he expected Trustee to treat him fairly. Petitioner never requested the Trustee to employ him as a broker, and never advised the Trustee that he expected or would seek compensation from the Debtor or the Trustee until May, 1954, after said Second Plan of Reorganization, including the sale to said Sugarman Lumber Company, had been consummated.

15. Neither the Second Plan of Reorganization nor any other instrument filed with the Court prior to the filing of petitioner's petition herein disclosed to the Court or to the creditors and stockholders of the Debtor that a commission or other compensation might be payable to petitioner or any other broker in connection with said Second Plan of Reorganization, or the sale to said Sugarman Lumber Company contemplated therein. The Court and the creditors and the stockholders of the Debtor were never advised, prior to the filing of petitioner's petition herein, that petitioner expected to receive a commission or other compensation from the Debtor. The Court approved and confirmed said Second Plan of Reorganization, and the creditors and stockholders of the Debtor submitted their binding acceptances of said Second Plan of Reorganization, in complete ignorance of the claim upon which petitioner now seeks to recover.

16. The Trustee relied upon his understanding with petitioner that petitioner was not representing the Trustee or the Debtor and would not receive

any compensation from the Trustee or the Debtor, in presenting said Second Plan of Reorganization to the Court and to the creditors and stockholders of the Debtor for approval, and in consummating said Second Plan of Reorganization following such approval.

Conclusions of Law

From the foregoing Findings of Fact, the Court concludes, as a matter of law, that:

1. Petitioner is not entitled to any real estate broker's commission or any other compensation whatsoever from the Trustee or the estate of the Debtor herein.

2. Neither the Trustee nor the Debtor entered into or offered to enter into any contract or agreement or understanding, express or implied, with petitioner for the employment of petitioner as a real estate broker or agent or employee of the Trustee or the Debtor, and neither the Trustee nor the Debtor agreed or offered to pay to petitioner any commission or other compensation in connection with any of the alleged services for which petitioner seeks compensation.

3. Petitioner was, at best, a volunteer with full warning, at all times, that neither the Trustee nor the Debtor would pay any broker's commission or other compensation in connection with any sale of the Debtor's assets or any other plan of reorganization of the Debtor.

4. In view of the foregoing conclusion that petitioner was a volunteer with full warning, peti-

tioner's petition for allowance of compensation must be denied, and it is not necessary to consider the remaining contentions made by the Trustee.

5. In any event, petitioner's alleged services were neither approved nor authorized by, nor brought to the attention of, the Court in these proceedings, and therefore no compensation may be allowed for any such services.

6. Petitioner is entitled to take nothing by his petition in these proceedings, and the Trustee is entitled to recover his costs herein.

Now, Therefore, in accordance with the foregoing Findings of Fact and Conclusions of Law, it is hereby Ordered, Adjudged and Decreed that the petition of Alex E. Wilson, the petitioner herein, for allowance of a real estate broker's commission be and the same is hereby denied, and no commission or other compensation whatsoever is allowed to petitioner herein.

Dated: March 19, 1957.

/s/ OLIVER J. CARTER,
United States District Judge.

[Endorsed]: Filed March 19, 1957.

In The United States District Court, Northern
District of California, Northern Division

No. 12223

In the Matter of
COASTAL PLYWOOD & TIMBER COMPANY,
a corporation, Debtor.

In Proceedings for the Reorganization of a Corporation.

JUDGMENT AND ORDER

There have been filed in the above-entitled proceedings a petition by Alex E. Wilson for the allowance of a real estate broker's commission on a sale of certain assets pursuant to a plan of reorganization of the above-named Debtor; and Fred G. Stevenot, the Trustee herein, having filed herein his written objections to the allowance of any such commission; and said petition and objections having come on regularly for hearing before the above entitled Court, Honorable Oliver J. Carter presiding, on the 21st day of June, 1954, the 6th day of July, 1954 and the 2nd day of August, 1954, petitioner being represented at said hearing by his counsel, Clifton Hildebrand, Esq., and Messrs. Files & McMurchie, and the above-named Debtor being represented at said hearing by its counsel, Herbert Dudley, Esq., and the above-named Trustee being represented at said hearing by his counsel, Walter G. Olson, Esq., of the firm of Messrs. Orrick, Dahlquist, Herrington & Sutcliffe; and evidence, oral

and documentary, having been introduced in support of said petition and in opposition thereto, and all parties interested having been heard; and the Court having made and filed its Findings of Fact and Conclusions of Law and having determined that the petitioner is not entitled to any allowance of compensation from the estate of the Debtor herein,

It Is Hereby Ordered, Adjudged and Decreed as follows:

I.

That the petition of Alex E. Wilson, the petitioner herein, for allowance of a real estate broker's commission be and the same is hereby denied.

II.

That Alex E. Wilson, the petitioner herein, be allowed no commission or other compensation whatsoever from the estate of Coastal Plywood & Timber Company, the Debtor herein.

III.

That Fred G. Stevenot, the Trust of the Debtor herein, recover from petitioner his costs and taxable disbursements herein.

Dated: March 19, 1957.

/s/ OLIVER J. CARTER,

United States District Judge.

Approved as to Form, as Provided in Rule 5 (d).

/s/ DONALD M. McMURCHIE,

Attorney for Petitioner.

Entered In Civil Docket March 20, 1957.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed March 19, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Alex E. Wilson, petitioner in the above entitled action, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on March 20, 1957.

Dated: April 15, 1957.

FILES & McMURCHIE,
/s/ By DONALD W. McMURCHIE,
Attorneys for Petitioner.

[Endorsed]: Filed April 15, 1957.

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON AP- PEAL

Comes now Alex E. Wilson, Petitioner, by and through his attorneys, Files & McMurchie, and files herein his Statement of Points Upon Which Appellant Intends to Rely On Appeal.

I.

That the District Court erred in not finding that Petitioner should be allowed a reasonable compensation for his services rendered to the Debtor in this reorganization proceeding at the specific instance and request of Trustee, which services were accepted

by the Trustee and admittedly of great benefit to the Debtors estate.

II.

That the District Court erred in not finding an implied in fact contract between Petitioner and the Trustee of the Debtors estate to pay petitioner a real estate brokers commission for his services in finding a buyer who purchased the assets of Debtors estate for the gross sum of approximately Four Million Three Hundred Fifty-Two Thousand (\$4,352,000.00) Dollars, which services were accepted by the Trustee and admittedly of great benefit to the Debtors estate.

III.

That the District Court erred in not finding an implied in law or quasi contract between Petitioner and the Trustee of Debtor as a matter of equity to pay the reasonable value of services rendered to Debtors estate which were accepted by the Trustee and admittedly of great benefit to Debtors estate, irrespective of the intent of the Trustee.

IV.

That the District Court erred in not finding that the District Court sitting in bankruptcy by virtue of its inherent equitable powers and as a matter of sound public policy should award compensation to Petitioner for valuable services rendered to, accepted by and of great benefit to Debtors estate.

V.

The District Court erred in not finding an express

contract or implied in fact contract between Petitioner and Debtors estate based upon the assurances by Sterling Carr, attorney for the Trustee and agent of Debtors estate, that Petitioner would be paid a real estate brokers commission if he found a purchaser for the assets of Debtors estate.

VI.

The District Court erred in not finding that the representations of Sterling Carr, attorney for the Trustee, who assured Petitioner that he would be paid if he found a purchaser for the assets of Debtors estate, were binding on Trustee and on Debtors estate.

VII.

That District Court erred in refusing to compensate Petitioner as a matter of equity for valuable services rendered to and accepted by Debtors estate, particularly since Petitioner was encouraged to proceed and promised compensation therefor by the Trustee and by an agent of the Trustee.

VIII.

That District Court erred in finding that Petitioner was to obtain his brokerage commission from Buyer for the said sale of the assets of the Debtors estate.

IX.

The District Court erred in not finding that Petitioner negotiated a resale of the assets for the buyer, after he had produced the said buyer who purchased the assets from the Debtors estate; and that

any compensation that may have been sought from the buyer himself, if any, was related to the said resale transaction of the same assets for and on behalf of buyer, and not for services rendered to Debtors estate.

X.

The District Court erred in not finding that Petitioner reasonably relied upon the Nielson transaction, which was a prior sale of similar assets of the same Debtors estate, under similar circumstances, and for which Petitioner was paid a brokerage commission in the sum of Five Thousand (\$5,000.00) Dollars by a check of the Debtors estate; and in not finding that by virtue thereof Petitioner proceeded to find a buyer of the remaining assets of Debtors estate, in good conscience and in good faith, believing he would be similarly compensated.

XI.

The District Court erred in not estopping Trustee from refusing payment of a brokerage commission to Petitioner, in view of the fact that Trustee paid Petitioner under similar circumstances in the Nielson transaction, on which Petitioner reasonably relied and rendered his services and incurring expense to find the buyer of the said assets and as a result thereof reasonably expected compensation therefor.

XII.

The Trial Court erred in finding Petitioner was a volunteer.

XIII.

The Trial Court erred in not finding that Petitioner expended a great deal of effort and incurred a great deal of expense in producing a buyer of the Debtors estate, and that in so doing he acted in good faith and reasonably believed, because of the Nielson transaction and the representations of the Trustee and by his attorney and agent, that he would be compensated for his services.

XIV.

That the evidence does not support the Findings of Fact and Conclusions of Law made and entered by the District Court.

XV.

That the Findings of Fact do not support the Conclusions of Law or the Order Denying Claim made and entered by the District Court.

XVI.

That the District Court erred in not making full and complete Findings of Fact relative to all material matters put into evidence at the trial of this action.

XVII.

That the Order Denying Compensation made and entered by the District Court is not supported by the law and the evidence at the trial.

XVIII.

That by reason of the law and evidence Petitioner is entitled to a Judgment for a real estate brokers

commission, and for reasonable compensation for services rendered to Debtors estate which were of great benefit to Debtors estate.

Dated: May, 1957.

FILES & McMURCHIE,

By

Attorneys for Petitioner.

[Endorsed]: Filed May 14, 1957.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Comes now Alex E. Wilson, Petitioner and Appellant, by and through his attorneys, Files & McMurchie, and hereby designates the following documents and matters to be printed as a material portion of the Record on Appeal:

1. Petition for Allowance of Real Estate Brokers Commission.
2. Order Fixing Hearing for Consideration of Petition for Allowance of Real Estate Brokers Commission.
3. Notice of Petition for Allowance of Real Estate Brokers Commission.
4. Objections by Trustee to Allowance of Real Estate Brokers Commission.
5. Affidavit of Trustee in Opposition to Petition for Allowance of Real Estate Brokers Commission.

6. A Reporters Transcript Containing All Evidence and the Proceedings at the Trial or Hearing.

7. Memorandum and Order—January 26, 1955.

8. Proposed Judgment and Order Lodged by Trustee.

9. Proposed Findings of Fact and Conclusions of Law Lodged by Trustee.

10. Proposed Findings of Fact and Conclusions of Law Lodged by Petitioner.

11. Notice of Motion and Motion for Further Consideration, for Order that no Judgment has been Entered, to Vacate Judgment, to Settle Findings, and to Enter Judgment.

12. Affidavit in Support of Motion for Further Consideration.

13. Memorandum of Points and Authorities on Notice of Motion.

14. Findings of Fact and Conclusions of Law and Order Denying Claim of Alex E. Wilson.

15. Notice of Appeal.

16. Statement of Points upon Which Appellant Intends to Rely upon Appeal.

17. This Designation of Record on Appeal.

18. All Exhibits Introduced at the Hearings of this Petition.

Dated: May 14, 1957.

FILES & McMURCHIE,

/s/ By DONALD W. McMURCHIE,

[Endorsed]: Filed May 14, 1957.

[Title of District Court and Cause.]

DESIGNATION BY APPELLEE OF ADDITIONAL PORTIONS OF RECORD ON APPEAL

Fred G. Stevenot, Trustee of the estate of the above-named Debtor, and Appellee herein, by and through his attorneys, Orrick, Dahlquist, Herrington & Sutcliffe, hereby designates the following additional portions of the record, proceedings and evidence to be included in the record on appeal herein:

1. Petition of Trustee for Authority to Sell Contracts of the Debtor, filed October 16, 1952.
2. Order Authorizing Trustee to Sell and Assign Certain Contracts of the Debtor, filed November 12, 1952.
3. Memorandum on Motion for Reconsideration, filed March 14, 1957.
4. Judgment and Order, filed March 19, 1957.
5. This designation.

Dated: May 21, 1957.

ORRICK, DAHLQUIST,
HERRINGTON & SUTCLIFFE,
/s/ By WALTER G. OLSON,
Attorneys for Trustee.

[Endorsed]: Filed March 22, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents listed below, are the originals filed in this Court in the above-entitled case, and that they constitute the record on appeal herein as designated by the parties.

1. Petition of trustee for authority to sell contracts of the debtor.

2. Order authorizing trustee to sell and assign certain contracts of the debtor.

3. Petition of Alex E. Wilson for allowance of Real Estate Brokers Commission.

4. Order fixing hearing for consideration of petition for allowance of Real Estate Brokers Commission and notice.

5. Objections by Trustee to allowance of Real Estate Broker's Commission.

6. Affidavit of Trustee in opposition to petition for allowance of Real Estate Brokers Commission.

7. Memorandum & Order.

8. Findings of fact and conclusions of law and order denying claim of Alex E. Wilson (Proposed by Trustee and not signed).

9. Findings of fact and conclusions of law (Proposed by petitioner and not signed).

10. Notice of motion and motion for further consideration, for order that no judgment has been entered, to vacate judgment, to settle findings, and to enter judgment.

11. Affidavit in support of motion for further consideration, for order that no judgment has been entered, to vacate judgment, to settle findings, and to enter judgment.

12. Memorandum of points & authorities on notice of motion.

13. Memorandum on motion for reconsideration.

14. Findings of fact & conclusions of law and order denying claim of Alex E. Wilson.

15. Judgment and order.

16. Notice of appeal.

17. Cost bond on appeal.

18. Statement of points upon which appellant intends to rely on appeal.

19. Petitioner's designation of record on appeal.

20. Appellee's designation of additional portions of record on appeal.

21. Order extending time to docket appeal.

22. Petitioner's exhibits 1 to 17 inclusive.

23. Appellee's exhibits A to D inclusive.

24. Three (3) volumes Reporter's Transcript.

In Witness Whereof, I have hereunto set my

hand and the seal of said Court this 31st day of May, 1957.

[Seal] C. W. CALBREATH,
 Clerk,
 /s/ By C. C. EVENSEN,
 Deputy Clerk.

In the District of the United States, Northern
District of California, Northern Division

Bankruptcy No. 12223

In re: COASTAL PLYWOOD AND TIMBER
COMPANY, Debtor.

REPORTER'S TRANSCRIPT OF PROCEED-
INGS ON PETITION FOR AGENT'S COM-
MISSION

Monday, June 21, 1954

Before Hon. Oliver J. Carter, Judge.

Appearances: For the Trustee: Sterling Carr, Esq., and W. G. Olson, Esq. For the Debtor: Herbert Dudley, Esq., Cloverdale, California. For the Petitioner Alex E. Wilson: Files and McMurchie and Clifton Hildebrand, Ochsner Building, Sacramento, California. [1]*

The Clerk: Bankruptcy No. 12,223 in re Coastal Plywood and Timber Company, motion for agent's commission.

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

The Court: All right, gentlemen, are you ready to proceed?

Mr. McMurchie: Yes. I thought it might be best if I proceeded with some type of statement as to the background.

The Court: Yes, you may make one.

Mr. McMurchie: If the Court please, this is a petition for the allowance of a real estate broker's commission to Mr. Alec E. Wilson, who we contend is the real estate broker who brought together Coastal Plywood and Timber Company, the debtor organization in this re-organization proceedings, and the Sugarman Lumber Company, who is the purchaser of the assets of Coastal Plywood and Timber.

The confirmation of this sale to Sugarman Lumber Company was made by this Court in March of this year for the sum of \$4,452,275.00.

This corporation has been in re-organization since 1951 and there is a multitude of proceedings that have taken place in this re-organization. It was not until July of 1953 that Mr. Wilson procured for this corporation its first offer for the purchase of its assets. Up until that time the only re-organization proceeding which was pending was a proceeding for a continuation of the business of the corporation under the direction of the trustees. That first plan of re-organization, however, was not satisfactory to the secured creditors, Bank of America and the RFC, and for that reason was never put into effect.

So the corporation was in an open re-organization status until this offer was received from Sugarman Lumber Company, which has finally been accepted.

I think the evidence will show that as a result of that offer all of the creditors and all of the stockholders are being paid a hundred percent on the dollar, which is certainly unusual in re-organization proceedings.

This petition has been filed by Mr. Wilson under Section 242 of the Bankruptcy Act, which authorizes the Court to allow reasonable compensation for services rendered by any party in interest of the administration of an estate in bankruptcy.

I also want to call to the Court's attention the case of Berman vs. Palmetto Apartments Corporation——

The Court: Is that cited in the memorandum?

Mr. McMurchie: That is cited in the memorandum at the conclusion of my petition, your Honor. It is 153 Federal 2nd 192. I have it here.

It is the only case that I have been able to find which deals with the allowance of a real estate broker commission in the re-organization proceedings, and I feel that the case is unusual in that it is almost directly in point in the case that is now before the Court.

In that case the Lower Court refused the allowance of a [3] commission and the Upper Court reversed, saying that it was clearly a case in equity—perhaps it would be easier if I read a portion of this case to the Court.

The District Court denied the petition all together. This was a petition of a real estate broker filed by the real estate broker as in this case. The Court filed an opinion which contained a finding that there was no valid existing contract between appellant and trustee for the payment of the commission to appellant.

I believe the same contention will be made in this case.

“Conceivably, this may be true, because the contract never had the sanction or approval of the Court; but we are not limited to a consideration of the strict legal rights of the parties. Appellant’s case, the broker’s case, cuts deeper than this.

The District Court was sitting in bankruptcy and under the Bankruptcy Act has equitable jurisdiction. It is generally held that a selling agent is entitled to compensation if the agency is the procuring power of the sale, and when his communication with the purchaser has been the means of bringing the purchaser and his principal together, his right to compensation is complete.”

The Court goes on to say: “The original offer, the withdrawal of it and the subsequent offer confirmed by the Court, were phases of a continuing transaction which resulted in the [4] sale and which appellant had equitable if not legal rights, since at the behest of the trustee and after diligent effort he found the purchaser.”

In the case I believe you will find there no prior authorization by the Court for the man to be employed as a real estate broker, talking from the

Berman case which I have just read from, nor was there any written authorization from the trustee to the broker. Yet in spite of that fact the Circuit Court here has directed an order for the payment of broker's commission when the broker secured the purchaser at the request and behest of the trustee.

The Court: Is that your position in this case, that the broker secured the purchaser at the request of the trustee?

Mr. McMurchie: Correct, your Honor, and that his services——

The Court: Insofar as you can answer the question, is there going to be an issue of fact on that question itself?

Mr. McMurchie: I believe there will not. There is some possibility——

Mr. Olson: Yes, your Honor, there will definitely be an issue of fact on that point.

The Court: That fact I will have to determine.

Mr. McMurchie: Yes, of course, your Honor.

I also feel that in this case the services of Mr. Wilson have been of substantial benefit to the estate and to the stockholders and to the creditors, and I believe that brings [5] it clearly under Section 242 of the Bankruptcy Act. That is what that section, in my mind, is for, is to make the payment of reasonable compensation for services rendered which have benefitted the re-organization of a bankrupt estate.

The Court: All right. You have no other authorities to cite, Mr. McMurchie?

Mr. McMurchie: I have none at this time.

The Court: All right.

Mr. Olson: May I reply briefly to that, your Honor?

The Court: What?

Mr. Olson: Would it be in order for me to reply to that briefly at this point?

The Court: Certainly you have the right to and I want to hear from you. Now you represent the trustee?

Mr. Olson: We represent the trustee, Mr. Stevenot, your Honor.

The Court: Are there any other parties who want to make an appearance here?

Mr. Dudley: I represent the debtor, your Honor.

The Court: And you want to appear in opposition to the petition?

Mr. Dudley: Yes, your Honor.

Mr. McMurchie: Your Honor, I think it might be best to go briefly into the facts of this case if there is going to be any argument on it. I think an estoppel question is going [6] to come up here because Mr. Wilson was engaged actively in the procuring of two purchasers in this re-organization proceeding. He was first authorized by the trustee to find a purchaser for certain *contacts* owned by the debtor corporation. The evidence will show that he expended a considerable amount of time in finding that purchaser.

The Court: What materiality has that to this issue?

Mr. McMurchie: I believe it is going to establish an estoppel because in that situation he was paid by the trustee and authorized by the Court to be paid a

broker's commission, and the background is identical to the background in the sale of the assets.

The Court: The only reason I want to hear from Mr. Olson is to find out if we can limit the issues in the matter if possible, and I wanted at the outset an opening statement and not in the way of any particular arguments. I want to hear his position.

Mr. Olson: If your Honor please, the position of the trustee with regards to the facts is set forth in an affidavit of the trustee which we have filed in opposition to the claim by Mr. Wilson. In brief, let me say this: The trustee's position in regards to the facts is simply this, that the trustee has at no time authorized Mr. Wilson or requested Mr. Wilson to act for him or for the debtor. In fact, the trustee had an understanding with Mr. Wilson that if Mr. [7] Wilson engaged in any activities in this proceedings he would act only on behalf of the people he brought in, and under no circumstances would a commission be paid by the trustee out of the debtor's estate, and it was on that understanding that the trustee relied.

Now counsel referred briefly to that prior transaction in which Mr. Wilson received a commission on the sale of some cutting contracts, relatively small assets in the debtor's estate.

Now the position of the trustee and the facts in that matter are as follows: The trustee had these cutting contracts which he could not take advantage of and he determined to sell them if he could get a good price for them.

Again Mr. Wilson came to the trustee's office and

the trustee told him that under no circumstances would he employ a broker or pay a commission.

Unfortunately, when the offer came in from Mr. Nielson at Santa Cruz it had a provision in there that out of the \$100,000.00 selling price for these contracts, \$5,000.00 must be paid to Mr. Wilson and no effort of the trustee could obtain an elimination of that provision and condition of the offer and the trustee, feeling that \$95,000.00 was a fair price for the contract was in effect forced for business reasons to go ahead on that procedure and approve that Mr. Wilson receive \$5,000.00 out of the proceeds of the sale of this contract, namely, \$100,000.00, but only because the [8] purchaser made it a condition of his offer.

It is the trustee's position that Mr. Wilson has never represented the trustee or been asked to represent the trustee or act on behalf of the trustee.

The Court: What explanation does the trustee have that he did not sell at \$95,000.00 and tell the purchaser to pay Mr. Wilson \$5,000.00 out of his pocket?

Mr. Olson: I am not sure I get that question.

The Court: In other words, if the estate was only going to receive \$95,000.00, why didn't he make the sale for \$95,000.00 and let the purchaser pay Mr. Wilson the \$5,000.00?

Mr. Olson: Because, your Honor, Mr. Nielson refused to change his offer. His offer came in for \$100,000.00 subject to a commission to be paid to Mr. Wilson in the amount of \$5,000.00.

The Court: He wouldn't change it.

Mr. Olson: He wouldn't change it.

The Court: I just wanted to be sure that I understood you. There was a discussion of this proposition of having a sale of \$95,000.00 and letting the purchaser pay the \$5,000.00?

Mr. Olson: That is correct. The purchaser—we endeavored to get that changed, the purchaser was anxious to proceed immediately however, and present the matter to this Court.

The Court: All right. Well, I suppose we will just have to argue those inferences to be drawn from those facts. [9]

Mr. Olson: Briefly in regards to the authorities, your Honor, simply to state the trustee's position—

The Court: Have you those cited in a brief, Mr. Olson?

Mr. Olson: No, your Honor, we have not filed any authorities as yet.

The Court: All right.

Mr. Olson: The claimant, Mr. Wilson, is proceeding under Section 242 of the Bankruptcy Act, and as I understand it, he is relying on the language of the section which permits allowance of a reorganization fee to any other parties in interest.

Now, your Honor, we have several authorities which I can cite to you which state that parties in interest include only officers of the Court—namely, the trustee, referee, and so on,—and the debtor itself, indenture trustees, and in addition to that only creditors and stockholders.

If your Honor please, Mr. Wilson does not fall under any of those categories.

The authorities, your Honor, are as follows:

In re South Street Building Corporation, 104 Federal 2nd, 353; in re Panhandle Reducing and Refining Co., 25 Fed. 2nd, 907, at page 911; in re Paramount Publix Corporation, 12 Fed. Supp, 823, page 827.

One of those cases in particular, your Honor, is squarely applicable here, and that is the Panhandle case, and it [10] involved a claim for commission by a person who negotiated an underwriting of securities under the plan and the Court referred to Section 242 and said, as I have already stated, that the term "parties in interest" included only certain people, and a volunteer or a person who was not actually a party before the Court or creditor or stockholder was not entitled to any compensation under that Section.

Now, your Honor, in reference to the Berman case there are a number of decisions which have a very direct bearing on this particular question and a much more direct bearing than the Berman case. One in particular, your Honor, is in re Equitable Office Building Corporation, appearing at 83 Fed. Supplement 581, a 1949 decision of the District Court of New York, and there is some language which I particularly want to refer to your Honor.

The Court stated as follows:

"It is to be borne in mind that Mr. Duncan, that is the trustee, without express sanction of the Court was without authority to obligate this estate for the payment of a broker's fee. This is a circumstance concerning which the petitioners were either aware

or should have known. If they expected to be paid the brokerage commission under the claim they should have at the offset clarified their status and asked that it be approved by the Court, and the failure to take these steps can not now be ignored.”

Another case directly in point is in *re Grime*, 35 Fed. [11] Supplement 15. General order 52, I believe it is, your Honor—no, general order 45 of the general rules in bankruptcy expressly states that no auctioneer shall be employed by a receiver, trustee, or debtor except on order of the Court expressly fixing the amount of the compensation. General order 45 is made applicable in re-organization proceedings by general order 52.

The case of *in re Grime* involved a broker employed for a private sale, actually employed by the trustee, and the Court said that the policy underlying general order 45 is directly applicable and prevents any allowance of compensation to a broker unless an order is procured in advance authorizing the trustee to employ that broker and fixing his amount of compensation.

There is a long line of cases, your Honor, holding that a volunteer is not entitled to a re-organization fee, that line of authority being to the same effect, unless an order of the Court is obtained or unless the person claiming compensation is a party in interest as defined by the authorities, no compensation may be allowed.

There are several other legal points on which we rely, your Honor: One, a line of authorities to the effect that in no event can a commission be recov-

ered where there is an express understanding between the broker and the trustee that no commission would be charged.

And I might refer your Honor to the case of *Henry v. Craig* [12] & Co., at 273 Federal, 926.

In addition, we contend, your Honor, that Mr. Wilson represented conflicting interests. He represented the purchaser or someone who purported to represent the purchaser in this matter, at least so his petition alleges, and he contends, your Honor, that he had an agreement with this gentleman named Steinberg, who is alleged to have represented the purchaser for payment of compensation to him by Mr. Steinberg.

Under the general principles rule of law, your Honor, one who represents a conflicting interest cannot recover.

In a bankruptcy situation, however, the rule is much stronger, for reasons of very obvious policy and I will refer your Honor to the case of *Woods v. City National Bank and Trust Co.*, appearing at 312 US 262, 61 Supreme Court 493, where the Court points out that the term "reasonable compensation for services rendered" as used in the Bankruptcy Act necessarily implies loyal and disinterested service in the interest of those for whom the claimant purported to act.

I have several other cases on that very point, your Honor, if you would like me to cite them, or shall I defer that until a later point in the hearing?

The Court: Yes, I would, and in the event you want to prepare a memorandum you may.

Mr. Olson: In closing, your Honor, let me say that the [13] trustee has no knowledge that Mr. Wilson was any procuring party in this sale, we deny that on information in *believe* and we believe that your Honor will find that Mr. Wilson was not the procuring party in this sale.

Mr. Hildebrand: If your Honor please, I am afraid that we did not get our whole position before the Court so that the Court will understand the issue. Here is the situation as our evidence will present it:

Mr. Wilson, a real estate broker, is very friendly with Mr. Stevenot and very friendly with Mr. Carr, the attorney for the trustee. He has been many years in the real estate business of selling large amounts of timber, many millions of feet of timber.

He goes in and sees Mr. Stevenot and Mr. Stevenot says, "Well, it would be very advantageous to this estate if we could sell all the timber." Mr. Wilson wants to sell it piece by piece. "No," Mr. Stevenot says, "we cannot do that but if we can sell the whole thing, then a deal could be made."

Wilson says, "I will go to work on that."

Mr. Stevenot does not tell him not to. He knows he is working on it, and Mr. Wilson, knowing everybody in the industry and having wide contacts in the fields, goes to work on it and he contacts a vast number of people, and then, as the evidence will show here, he finally gets one large purchaser, Mr. Holm. Mr. Holm, in turn, gets the others [14] together and they make a deal.

Then in the mean time, the Sugarmans down in

Los Angeles decide that they will not go ahead with this deal unless they have the lumber resold before they get into the deal. In other words, they are going to make about \$2,000,000.00, or at least a million and a half sure thing without putting up a nickel, and here is a man that did all the work.

He put the deal together to start with, to get the purchaser when the trustee was just sitting there doing routine work. It would be a nice thing if we could get a purchaser who would buy all this timber, and then they get a purchaser through the efforts of this man we represent and then the very day that the deal is put together the trustee writes a letter to Mr. Wilson and says, "You understand that we can't pay you any commission," when he knows that the people in Los Angeles, the Sugarmans, have accepted the deal, when he has even arranged for the resale of the lumber, so that all the Sugarmans have to do is to come into the deal, they have already got it resold and they make a cool million and a half without putting up a nickel, and this man did all the work.

Now that is our case, and if there is any equity in any Court, the man who put the whole deal together, who got the purchaser for him, who even resold the lumber for them, is left out on the limb and these people get forty thousand and fifty thousand, and tremendous fees, and here is the man [15] who did all the work.

That is our case, and we feel it is an equitable case and under the circumstances, they cannot come along at the last minute after having already done

all the work, after having already put the deal together—we know usually in these deals the commission is never paid by the purchaser, the commission is always paid by the seller to the real estate broker, and in this very case on a hundred thousand dollar deal these same people, even though they hadn't authorized it, they come into this Court and ask that he be paid \$5,000.00 when he sold \$100,000.00 worth of timber for them in a preliminary part of this same deal, and now the very day when they consummate the deal and these fellows in Los Angeles, the Sugarman boys, are going to make a million and a half and put up nothing and take advantage of his work and labor, that very day, the trustee repudiates that he is going to pay him a commission and writes him a letter, after letting him go ahead and do all the work and advising him repeatedly as to what is happening.

Now that is our case, your Honor, and I wanted to get it clearly before the Court to start with so that the Court will know just what we are driving at.

Now as to this claim of conflicting interest, our position is this: a Mr. Steinberg had arranged a deal with the Sugarman. He got in touch with Mr. Wilson. Mr. Wilson told him what he was doing. He knew these lumber people, they all [16] wanted this lumber, and he had a deal. He could sell this lumber, and nothing to it.

So Mr. Steinberg was down in Los Angeles. He gets a hold of the Sugarman and the Sugarman say, "We will take it, but it has to be resold."

So Wilson says, "All right, I will resell it."

So he gets it resold for Sugarman's.

So Steinberg then tells Wilson — Wilson says, "Well, I don't know how I am going to come out on this, I am not a lawyer, I haven't any contract with the trustee, I did the work, I negotiated this sale, but I don't know where" —

Steinberg says, "I'll tell you, if I get paid anything by the Sugarman's, I will see that you get paid. How much have you got in it?"

Wilson said, "Well, I spent about \$25,000.00 in time and effort running here and irrespective of any fee, I am out about \$25,000.00."

And Steinberg says, "If they don't pay you and I get anything out of the Sugarman's, I will pay you \$25,000.00, and write you a letter to that effect."

But it is just one of those volunteer things on Steinberg's part, and now the Sugarman's have repudiated Steinberg and they have got a cool million and a half that was handed to them on a silver platter without putting up a dime, and they are not even going to pay Steinberg now, so if Wilson is going to get anything, unless he waits for the result of some [17] possible dispute or litigation between Steinberg and the Sugarman's, he has to get it in this proceedings.

Now that is our case and our contention in an equity proceeding, your Honor.

The Court: Let me ask one question of both counsel: what is there to argue about in this case in the dollars and cents.

Mr. Hildebrand: Well, we feel that five percent

commission is the usual commission, five percent of four million and some——

The Court: Where is it coming from?

Mr. Hildebrand: From the assets of the estate. They still have got a million and half, I think, or some such amount coming. Mr. Wilson doesn't want to embarrass the estate at this time if they don't have the money then pay him as they get the money on the deal arranged for. He certainly is willing—everybody else has been paid in cash, and he is the fellow that really set the thing up; but still, I mean, it can be worked out. There is plenty of money coming in.

The Court: The reason I asked the question is that I note there has been other proceedings which have been had before Judge Lemmon asking for the award of attorneys fees and other fees in this case, and I presume those awards were made in view of the amount of money that is left in the estate [18] and whatever claims have to be paid.

Mr. Hildebrand: If there isn't enough money left then, if your Honor feels that our evidence justifies the allowance. Mr. Wilson is perfectly willing to cooperate. He has cooperated right along with them, but there is over a million dollars coming in the near future for some of this timber that he negotiated the sale of, so there is plenty of money coming in to pay——

The Court: The only reason I asked the question is to know whether there is any property or interest in property on which the Court had any power to make any——

Mr. Hildebrand: I understand there is about \$150,000.00 in the estate, but how it may be obligated or what they have to do on that, of course,—

The Court: I don't know whether it makes any difference or not, but I asked the question simply so I will have some idea as to what the financial situation is.

Mr. Hildebrand: The main thing is there is still over a million dollars, we know that, coming in on the deal, even after the bank has been paid and after the RFC has been paid and after the attorneys and the trustee and everybody else has been paid. There is still a lot of money—

The Court: The only reason I asked the question is—at least he is not a preferred claim, he is no more than a general claimant, is that right? [19]

Mr. McMurchie: I believe, your Honor, under Section 242 he would be classified as an administrative expense of the estate, the same as the attorneys fees and the trustees fees.

The Court: At least that is what you contend.

Mr. McMurchie: That is our contention, and as such would have first priority against the assets of the company.

Mr. Hildebrand: They *sole* hold in this Berman case, which is the only case—we Shepardized it and it is the only case—

The Court: I am not going to argue the case any further. I wanted to get your positions in mind so when I hear the evidence I will be able to understand its bearing.

Mr. McMurchie: You may be interested in this Berman case, your Honor. I have the book here.

The Court: I will read it when the matter is submitted. I don't need it now.

Mr. Olson: Your Honor——

The Court: Yes, Mr. Olson.

Mr. Olson: Just one brief word, your Honor, in respect to the matter as to who did all the work in formulating the Sugarman plan and put money into it. That is a matter which I assume will not be retried at this point. I would like to refer your Honor to the opinion of Judge Murphy issued in April of this year after a three day hearing on a proceeding to set aside the plan of re-organization. It has some very [20] pertinent comments on that particular point, and indicates, I believe, that counsel was incorrect in his statement that all the work was done by Mr. Wilson and no money was put up by Mr. Sugarman.

The Court: Well, that is just the point; I don't want to get into taking testimony on anything that I do not have to and I want to get the issues limited to the proposition that is before the Court. Of course, if there has been any prior ruling by a judge in this case which is either the law of the case or might by any stretch of the imagination be determined to be *res adjudicata*, which I doubt occurred in the situation——

Mr. Olson: No, I do not mean to convey that.

The Court: Then, of course, I would be bound by those decisions, but it is up to counsel to point those out to me. I don't know what the problem is.

Now I assume, gentlemen, that you desire to offer testimony on the issues that are involved here. How many witnesses do you have, Mr. McMurchie?

Mr. McMurchie: I have two witnesses, your Honor, Mr. Steinberg and Mr. Wilson.

The Court: And how many do you expect to call?

Mr. Olson: We expect at this point to call only the trustee, your Honor.

The Court: All right. Now then, counsel for the debtor, [21] Mr. Dudley, do you have any statement to make at this point so I can have your position?

Mr. Dudley: No, your Honor, unfortunately, the debtor has none of the facts available, all these transactions are supposed to have taken place with the trustee, and we can only concur in what action the trustee takes.

The Court: All right, Mr. McMurchie, call your first witness.

ALEX E. WILSON

called for the petitioner, sworn.

Direct Examination

Q. (By Mr. McMurchie): Mr. Wilson, will you give the Court your address?

A. My home or my office?

Q. Both addresses.

A. I live at 1360 Jones Street, San Francisco; my office is in the Alexander Building, Suite 501, 155 Montgomery Street, San Francisco.

Q. Are you a duly licensed real estate broker in the State of California? A. I am.

(Testimony of Alex E. Wilson.)

Q. And for how long a period of time have you been a licensed real estate broker?

A. I have been a real estate broker for thirty-three years. [22]

Q. During this period of time have you specialized in any particular type of transaction?

A. I got back from Europe from the War in 1945, and at that date I started to specialize in the sale of timber lands.

Q. For how long a period of time have you so specialized since the War?

A. Since 1945, when I returned.

Q. Do you have an estimate of the amount of timber land which you sold during that period of time?

A. Yes sir. I have sold approximately five hundred million feet of timber since 1945.

Q. During all of that time, Mr. Wilson, were you ever paid a commission by anyone other than the seller?

A. No sir, I have never been paid a commission by any one but the seller in thirty-three years.

Q. I assume that through your work in timber land you had become acquainted with firms and businesses which handle lumber and timber on the west coast?

A. Yes I have.

Q. When did you first become acquainted with the properties owned by Coastal Plywood and Timber Company?

A. I just returned from Europe and Mr. Henry Crowfoot, Sr., who bought these properties for

(Testimony of Alex E. Wilson.)

Coastal, called on me in San Francisco. I had known Mr. Crowfoot when he used to be a cruiser in Alaska for Lord Northclift. He asked me to [23] go over the properties in the Garcia Tract and the Ricard in 1945, stating at that time or shortly after they may be for sale, and he thought if they were he would put me in contact and I could sell them.

We walked over almost all of that property—at one time in fact, we were lost there for three days and three nights; it was on Election Day as I recall, and the fog came in and we walked from Boonville back and forth and came out at Gualala; so I walked over most of the property in the three days.

Q. Have you been connected with any particularly large timber transactions during your experience as a broker? A. Yes I have.

Q. Can you name any of them?

A. Well I put three million dollars worth of lumber into the atomic bomb plant at Hanford when Jones and Atkinson were building the atomic plant at Hanford. At that time I was a Lumber buyer working for the Anchor Bay Lumber Company, but during the last few years, from 1945 up until now, I have sold some very large blocks of timber to some of the large saw mills that are in business, and also to them.

Q. Now Mr. Wilson I assume that you know Mr. Fred G. Stevenot, who is the trustee?

A. Yes I am acquainted with Mr. Stevenot.

Q. Can you tell me how you first became acquainted with Mr. Stevenot? [24]

(Testimony of Alex E. Wilson.)

A. Mr. Sterling Carr has been my lawyer for about twenty-five years and has been my very close friend. He knew I was selling timber and I went up to his office one day and he told me that the Coastal were in bad shape and that they wanted to sell the assets. He told me Mr. Stevenot was the trustee and if I would like I should go down and see him. I did so.

Q. Approximately when was that?

A. That was in July 1952.

Q. July of '52? A. Yes sir.

Q. And where did you first meet Mr. Stevenot?

A. I went down to Mr. Stevenot's office, which is in the main branch of the Bank of America building at California and Montgomery Streets in San Francisco.

Q. And did you talk to Mr. Stevenot at that time?

A. Yes; I went into Mr. Stevenot's office and introduced myself, I told him that Mr. Carr had told me that he would like to sell the properties.

Q. Was any one else present at that time?

A. There was no one else present except Mr. Stevenot and I.

Q. Can you relate that conversation for us?

A. Yes, I can. Mr. Stevenot said that right at the moment they wanted to buy some large equipment up at the mill at Cloverdale and needed some money. He said they had some contracts, known as the Ricard, the Brush and the Reynold contracts, timber contracts. That they would like to sell [25]

(Testimony of Alex E. Wilson.)

them immediately as they needed the money and there were some points about those contracts which were very bad.

Number one, all the timber had to be removed by 1956. There was seventy-six million feet of timber there. Another point the contracts stated that all the land must be cleared. It didn't specify how it should be cleared under this lumber contract.

Also there were right-of-way troubles. They were contracts that were very dangerous for the Coastal Plywood Company. They turned out to be very dangerous for anyone.

Anyway he said he wanted to sell them immediately. I said I thought I could do it.

Q. Did he discuss with you the price that he wished to obtain?

A. Yes, Mr. Stevenot told me he wanted to get a hundred thousand dollars cash for the Coastal and that they wanted to assign the contracts without any liability whatsoever thereafter. They wanted to assign them to the buyer so the buyer could not come back onto Coastal in any way.

Q. Was any mention made of possible prospects you might have?

A. Oh, I mentioned many prospects I might have.

Q. What did Mr. Stevenot say in that regard?

A. Mr. Stevenot told me as he has always told me, he said, "All right, Wilson, I want you to sell them, and I want to get a hundred thousand dollars,

(Testimony of Alex E. Wilson.)

but I want you to get [26] commission from the buyer, I want the buyer to pay you.”

Q. What did you reply to that?

A. Oh I told Mr. Stevenot then, as I have told him many times, I said, “Well, that is a very difficult thing to do; the buyer never pays, the seller always pays. I will try to do it, but I don’t think I can.”

Q. Did you ever agree with Mr. Stevenot in regard to these contracts that we are now discussing that you would obtain your commission from the buyer?

A. No, never; it was always a question of him saying to try to get it from the buyer and my saying, “Mr. Stevenot, I can’t get it from the buyer.”

Q. Now following this meeting with Mr. Stevenot did you proceed with your attempts to find a purchaser for these contracts?

A. I did, sir.

Q. And over what period of time were you working on obtaining a purchaser for these Brush, Reynold and Ricard contracts?

A. I started in July immediately after I met Mr. Stevenot in 1952 and I sold them, I believe, in October, 1952.

Q. Now during that period of time between July and October of 1952 you worked on these contracts?

A. Yes sir.

Q. Can you tell me some of the people who you contacted and some of the things that you did? [27]

(Testimony of Alex E. Wilson.)

A. Yes I could. I have here a list, and may I read them to you?

Q. Yes, refer to your list. Do you want to see the list? (Exhibiting document to counsel.)

The Witness: I just want to see if I have the right ones. Yes, these are lists——

Q. Can you give us then Mr. Wilson some of the people whom you contacted and the work that you did with those people?

A. Yes I can, sir. As I stated, I started in July, 1952 and sold the properties October 11, 1952. Some of the people that I contacted were the Harold L. Putnam Lumber Company of Harbor, Oregon.

Q. How did you contact them?

A. I contacted these men by telephone and by letter and by advertisements. I might state that I started my campaign with advertisements—some of the copies I have—in the Portland Oregonian and the San Francisco Examiner.

Q. Did you have some other people that you contacted during that time?

A. Yes sir. Then I contacted Van Buckster of the Price Building Company in Palo Alto; Carleton L. Rank of Lafayette.

The Court: That is the attorney?

A. Yes sir.

The Court: That used to be in Oakland?

A. Yes, and he is now a timber broker, I believe. [28]

The Court: And also carried on some management of some business in Eureka?

(Testimony of Alex E. Wilson.)

A. I believe so.

The Court: Or Arcata?

A. I believe so. Then Ed Lassard of the Craig Lumber Company of Philo. I took Mr. Lassard twice completely over the Coastal properties together with the Ricard, the Reynold and the Brush properties.

Then J. Warren Brigte of Coos Bay, Oregon. J. J. Steig or Steiger of Klamath Falls, Oregon.

I took Warren C. Powell of Roseburg, Oregon, to the property; Ralph Costdick of the Costdick Lumber Company of Salkum, Washington; the Pickering Brothers Logging Company of the Dalles, Oregon; W. M. Howe of Lyons, Oregon; Alexander Lumber Company of Gold Beach, Oregon.

I took these men completely over the property.

Then B. M. Burns, owner of the Anderson Valley Lumber Company at Philo. The Empire Lumber Company of Richmond, California; Herbert L. Snyder of the Northland Lumber Company of Garvias, Oregon.

Q. (By Mr. McMurchie): These are all people that you contacted?

A. These are all people that I wrote to or took to the property or telephoned many times and sent them—all of these people were sent maps by me of the Coastal properties, reports, inventories, surveys, cruises—by that I mean timber cruises. [29]

Joe Mancy of Wenlock, Washington; Carl Walker, General Manager of Feather River Pine Mills of Feather Falls, California; — Mr. Carl

(Testimony of Alex E. Wilson.)

Walker and I spent three days, staying in Boonville and went completely over these properties; S. J. Hall of Santa Rosa; the Speckard Lumber Company of Marysville, California—Mr. Speckard and I spent three days on the Coastal and the Ricard properties going through the forest; Otto Werman of the Aberdeen Lumber Company of Aberdeen, Washington; Peter Eathol of Seadrow Valley, Washington; Bob Jensen of Willits, California; Fred Dixon of Colton, Oregon—Fred Dixon and I spent three days—an entire day on the Coastal property and two days on the Brush and Reynold contracts and the Ricard; H. Kling of Colton, Oregon; Harry W. Johnson of Canyonville, Oregon; W. M. Howell of Mill City, Oregon.

I have notes here that I wrote about a hundred letters in this deal, ran ads in the San Francisco Examiner, the Portland Oregonian, copies of which I have attached here, all paid by me, of course.

Q. Now Mr. Wilson we have been discussing here so far mainly these contracts, the Brush, Reynold and Ricard contracts. A. Yes sir.

Q. But you mentioned in your testimony that you also discussed with these people the sale of the Garcia tract? A. Yes. [30]

Q. When did you first become acquainted with the Garcia tract?

A. Well of course I was well acquainted with it when I walked over it for three days and three nights, but Mr. Stevenot told me when he instructed me to sell the Ricard, Brush and Reynold contracts,

(Testimony of Alex E. Wilson.)

he said, "Now I am having some business with the court and in a very few days I will want you to try to sell that also."

So knowing that I didn't wait, I put an ad—here is an ad in the Portland Oregonian in September, 1952: "For Sale six hundred million feet of virgin redwood and douglas fir in California." That is the Garcia tract. I put six hundred million feet because Mr. Stevenot didn't have the cruise finished at that time. He later finished the cruise and the cruise showed five hundred and eighty-five million feet, I believe—it was a little short of six hundred million.

Then the ad continued: "Will sell sixty million feet separately." Then I had the box, "Write C. 3324." That is my box number.

What I was doing there I was advertising both pieces.

Q. That is the point I was trying to bring out. As I understand it when you approached these people in regards to these contracts you also discussed with them the purchase of this Garcia tract?

A. Yes sir. Whenever I found a man that I thought had enough money to buy the Garcia—Mr. Stevenot always told me [31] to get four million dollars if I could—Mr. Stevenot says, "If you can bring in an offer for four million dollars I am sure we can make a deal and the court will approve it." So I began quoting the four million.

Q. What portion of this time between July, 1952, and October of 1952 was spent on the Garcia

(Testimony of Alex E. Wilson.)

tract as distinguished from the Brush, Reynold and Ricard contracts?

A. I would say about a quarter of my time.

Q. About a quarter of the time that you have related so far was spent on the Garcia tract?

A. That is true.

Q. Can you tell us what the Garcia tract consisted of?

A. The Garcia tract consisted of thirty-six thousand acres of land. It ran practically east and west. The eastern boundaries started a little bit west of Boonville and it ran over almost to the ocean. It was a very fine tract of timber consisting of redwood, douglas fir mostly, but there was about eight percent of sugar pine.

The Court: Is that named the Garcia tract because of the Garcia River water shed?

A. I presume sir that that was the reason.

Q. (By Mr. McMurchie): As I understand, it was the sale of this Garcia tract along with the other assets of Coastal which is the subject of this hearing at the present time?

A. That is true.

Q. Now during this period from August of 1952, to October [32] 1952, were you in contact with Mr. Stevenot in any way?

A. Oh yes, I was in contact with Mr. Stevenot every week, sometimes two or three times a day in his office, phoning him, sending him telegrams from where ever I was, I wrote him many letters telling him of my progress, the people I was calling on, the

(Testimony of Alex E. Wilson.)

extent that I was happy or my disappointments, if any.

Q. During this time did Mr. Stevenot give you any instructions or directions as to the sale of the contracts?

A. Oh yes, Mr. Stevenot was very, very helpful. He gave me maps, he gave me cruises and he gave me everything I asked for and aided me in every way in completing the sale. He was very cooperative.

Q. Did he ever discourage your efforts on behalf of the debtor corporation in any way?

A. No, he encouraged me, telling me he was sure I could sell it, he was sure I would sell it.

Q. Now you say you did find a purchaser for the Brush, Ricard and Reynold properties?

A. I did.

Q. What was the name of that purchaser?

A. I finally found one of my clients, Mr. Clarence Nielson, and his wife, Amy K. Nielson, of Santa Cruz.

Q. Now were your negotiations with Mr. Nielson prior to his purchase extensive or were they restricted?

A. They were very extensive because I went many times, [33] four or five times, with Mr. Nielson to look the property over again and Mr. Stevenot told me that he must have a hundred thousand dollars for it. I told Mr. Nielson that. I went down to Santa Cruz and Mr. Nielson told me, he said, "Well, Wilson, I will buy the property."

(Testimony of Alex E. Wilson.)

He gave me a financial report, he was worth about \$700,000.00. He said I haven't got one hundred thousand dollars in cash, but if you will arrange a loan for me with the Bank of America I will buy the property for a hundred thousand dollars.

I went down to Santa Cruz and we went to his Bank of America, the branch bank, and Mr. Nielson met with a little resistance there and he was quite disappointed. So was I. But I knew Mr. Meyers, the manager of the main branch, and Mr. Michelltti, his assistant. So I told Mr. Nielson that I thought he should come with me to San Francisco, that I fully believed that with his financial report the main branch would give him that money.

He came with me to San Francisco and we stayed here several days meeting with Mr. Michelltti and Mr. Meyers—I kept Mr. Stevenot informed of that, he knew all about that—and soon Mr. Meyers and Mr. Michelltti told me that they would give Mr. Nielson a hundred thousand dollars.

Q. Thereafter did Mr. Nielson submit an offer of purchase?

A. Mr. Nielson submitted an offer of one hundred thousand dollars cash which Mr. Stevenot had instructed me to obtain for him. [34]

Q. Mr. Wilson I hand you here a letter which is on your letterhead and purportedly signed by Clarence L. Nielson. Do you know Mr. Nielson's signature?

A. Yes sir.

Q. Did you see him sign that letter?

A. Yes. I wrote it for him.

(Testimony of Alex E. Wilson.)

Q. That is his signature? A. Yes sir.

Q. Was that letter delivered to Mr. Stevenot?

A. That letter was delivered to Mr. Stevenot.

Mr. McMurchie: I ask that this letter be introduced into evidence as Petitioner's Exhibit One, your Honor.

The Court: It will be admitted into evidence as Petitioner's Exhibit One.

(The document referred to was marked Petitioner's Exhibit Number One.)

Mr. McMurchie: The letter reads:

"I now wish to submit to you the following proposition for the purchase of the contracts held by Coastal Plywood with the following land owners; Stanley E. and Delia A. Brush, Pauline Brush; George E. Remmell; Rankin P. Rickard, Marjorie Rickard, Wesley P. Rickard, Vina M. Rickard and W. L. Rickard.

You are to grant me a 60 day exclusive option to purchase the said properties during which time I will attempt to secure from the above named land owners, certain changes in their [35] contracts with Coastal Plywood Company, satisfactory to me.

In the event that I secure said changes satisfactory to me I will turn over to you \$100,000 for the purchase of all of your interests in the said contracts. In this event I will accept the said contracts from you without warranty or guarantee of any kind commencing on the date I take them over.

In the event that I fail to obtain from the above named land owners contracts or amendments to

(Testimony of Alex E. Wilson.)

present contracts, satisfactory to me, then, and in that case my money or check, in its entirety, shall be returned to me, and there shall be no deal, or liability on the part of either party.

I am hereby attaching my check in the sum of \$5,000 as a good faith payment and as evidence of my sincerity in carrying out this deal if possible. In the event that the said deal is not consummated this \$5,000 check, hereby attached, is also to be returned to me."

Q. (By Mr. McMurchie): Do you know Mr. Wilson whether that offer was accepted by Coastal Plywood and Timber Company?

A. That offer was accepted by Coastal Plywood and Timber Company.

Q. And was that offer submitted to the Court for confirmation?

A. It was submitted to Judge Lemmon in this Court and confirmed. [36]

Q. Did that confirmation contain the provision for the payment of a real estate broker's commission?

A. Yes, it contained a provision to pay me \$5,000.00 or five per cent on the purchase price of \$100,000.00

Q. And that was an authorization to accept the purchase price of \$100,000.00 and to pay you a commission of \$5,000.00?

A. Yes, by Coastal Plywood.

Q. Now \$5,000.00 on the sales price of a \$100,-

(Testimony of Alex E. Wilson.)

000.00 would be five per cent commission, is that correct? A. That is true, sir.

Q. And is that the usual commission for a real estate broker?

A. That is the usual real estate commission in California.

Q. What do you base that on?

A. I base that on all the real estate associations in the State, the San Francisco Real Estate Association regulations, a copy of which I gave you the other day, the 1954 edition.

Q. The 1954 edition of the San Francisco Real Estate Board rating? A. Yes, sir.

Q. That calls for a five per cent commission to a real estate broker? A. That is true.

Q. And that amount was paid to you in this transaction? A. Yes, by the Coastal Plywood.

Q. Who paid you the \$5,000.00? [37]

A. Mr. Stevenot handed it to me in his office and it was paid to me by the Coastal Plywood Company.

Q. Did you retain the attachment to that check?

A. I did.

Q. Was that attached to the check at the time it was delivered to you?

A. Yes, sir, it is the stub which I tore off the main check and kept it as a reference for my file.

Q. And that reads, "Commission sale of cutting contracts, \$5,000.00," does it not?

A. That is true.

Q. And that check was made payable by Coastal Plywood and Timber Company?

(Testimony of Alex E. Wilson.)

A. That is true.

Mr. McMurchie: I introduce this as Petitioner's Exhibit Number Two.

The Court: All right it will be marked Petitioner's Exhibit Number Two.

(The document referred to was marked Petitioner's Exhibit Number Two.)

Q. (By Mr. McMurchie): Prior to this sale of the contracts to Mr. Nielson had you ever discussed with Mr. Stevenot the payment to you of a real estate broker's commission for the sale of these contracts?

A. Oh, many, many times. Mr. Stevenot would always tell me, "No, I don't want to pay you a commission, you must get [38] your commission from the buyer."

I told Mr. Stevenot, "Well, of course, that is a difficult thing to do, in my thirty-three years as a broker I have never been able to do it, but we will try."

But he always paid me in the final analysis. I thought that he would and he did.

Q. Prior to the sale to Mr. Nielson did Mr. Stevenot ever obtain authorization for you to act as real estate broker in the sale of this land?

A. No, sir. I didn't know I had to have authorization.

Q. You had no knowledge that authorization might be required? A. No, sir.

Q. Did Mr. Stevenot ever discuss Court authorization with you? A. No, sir.

(Testimony of Alex E. Wilson.)

Q. Did you know anything about Court authorization of your own knowledge? A. No, sir.

Q. In spite of that fact you did receive your commission of \$5,000.00 on the sale of the contracts?

A. Yes, he finally paid me. I think the day before the sale Mr. Stevenot said, "Well, we are going to pay you."

I said, "I am very happy to hear that." I said, "I thought that you would, I felt sure you would pay me, Mr. Stevenot." [39]

Q. We have been talking here, Mr. Wilson, about the period between July, 1952, and October, 1952, is that correct? A. That is true.

Q. And following the completion of this Nielson sale did you continue in your efforts to obtain a purchaser for the balance of the assets of Coastal Plywood and Timber Company?

A. Yes. Shortly after I sold the timber contract for Coastal Mr. Stevenot told me that he had ordered a cruise of the timber, the Coastal timber, and he had asked Hammond Jensen, the timber cruiser, to complete the same and it would be finished very soon.

I immediately started in to find a buyer for the Garcia tract and the remainder of the assets of the Company.

Q. Can you tell us some of the efforts which you took in your efforts to obtain a purchaser for the balance of the assets of Coastal?

A. Yes. I contacted probably all of the large

(Testimony of Alex E. Wilson.)

mills. I have a file here that shows partially something of what I did.

The Court: Mr. McMurchie, do you have any idea or estimate of how much longer it will take you to complete the direct examination of this witness?

Mr. McMurchie: I presume, your Honor, about a half an hour.

The Court: Well I have a problem as to time. I have a problem of picking a jury this afternoon in a condemnation [40] action which starts at one thirty. I don't know how long it will take to pick the jury. I imagine in the neighborhood of an hour to an hour and half, and I am going to have to continue this matter until the conclusion of that and then go forward with this matter. Then if we need more time it is going to be a situation of having to hear this either before or after court on the regular jury trial. However, I would hope that we might be able to conclude it today, if I can dispose of the picking of the jury rapidly enough.

Mr. McMurchie: I should think we could, your Honor.

The Court: Now I will anticipate there may be some arguments in this matter on the question of the jury, so I think it would be wise if I recessed this matter until two thirty and then we will go forward as rapidly as we can and attempt to conclude the matter this afternoon.

All right, we will be at recess until two thirty.

(Thereupon the further hearing of this matter was continued to two thirty p.m. this date.)

Afternoon Session—Monday, June 21, 1954

Mr. McMurchie: If the Court please, I have consulted Mr. Olson and by stipulation at this time I would like to call out of order Mr. William Steinberg.

The Court: You may do so.

Mr. Olson: Will Mr. Steinberg be available later in this hearing?

The Court: You feel you won't be able to complete your cross examination?

Mr. Olson: Well, I don't know. That is the question that is in my mind, how much time the Court will be able to allow us today and whether we will be able to conclude.

The Court: Well we will go as long as we can and not any later than five o'clock.

Mr. Hildebrand: Mr. Steinberg is a lawyer and I understand he has another case on tomorrow, and that is the reason we are putting him on out of order.

The Court: Well that is true, but what Mr. Olson wants to know is is he going to be cut short on the cross examination. He is entitled to a fair opportunity to cross examine.

Mr. McMurchie: I presume he will be available if necessary.

Mr. Steinberg: Oh, yes.

The Court: All right.

WILLIAM STEINBERG

called for the Petitioner, sworn.

Direct Examination [42]

Q. (By Mr. McMurchie): Now your name is William Steinberg, is it not? A. Yes, sir.

Q. And you are a practicing attorney before all the courts of the State of California, are you not?

A. Yes, sir.

Q. And you are practicing in San Francisco at the present time? A. Yes, sir.

Q. Mr. Steinberg, you are appearing here under subpoena, are you not? A. That is correct.

Q. Mr. Steinberg, I assume you know Mr. Alex Wilson? A. I do, yes, sir.

Q. When did you first become acquainted with him? Approximately what date?

A. In the early part of June, 1953.

Q. Can you tell me the circumstances under which you happened to become acquainted with Mr. Wilson

A. Mr. Kewin, whom I have known for a long time, brought Mr. Wilson into my office, stating that Mr. Wilson had a lumber deal which he controlled, if I knew anybody who would be interested in this particular lumber deal, and I told him in front of Mr. Kewin that if the lumber deal was attractive and if it had merit to it, that I had some people that would be very much interested in purchasing the lumber deal. [43]

Q. Mr. Wilson was referring to the assets of

(Testimony of William Steinberg.)

the Coastal Plywood and Timber Company, was he not?

A. After that he told me it was the Coastal Plywood and Timber Company, and at that time I told him I knew about it, but that I didn't know that anybody was in a position to deliver the Coastal Plywood Company and Mr. Wilson at that time said he was.

Q. That is the first time that you were informed then that any one was in a position to sell the Coastal Plywood?

A. That is correct.

Q. —that the assets of that corporation were in the market.

A. That is correct.

Q. Did you have any discussion with Mr. Wilson at that time as to the assets which were included within the properties of Coastal?

A. I did. I went into great detail with him, and he told me all of the assets, including the accounts receivable, timber and the mill, and he told me the price at which it could be purchased, and he said there would be no question about it if we came up with \$4,000,000.00 that the Court would approve it and we would be able to purchase them for \$4,000,000.00.

I told him to get all the information for me, the balance sheets and everything else that could be examined and if it merited \$4,000,000.00 I am sure that the people I was connected with and represented would pay four million dollars. [44]

Q. And whom did you represent at that time?

A. At that time I represented N. A. Sugarman

(Testimony of William Steinberg.)

of the Sugarman Lumber Company and other people interested with him. It was a group of people.

Q. N. A. Sugarman and his associates?

A. Yes, sir.

Q. What type of association was that, Mr. Steinberg?

A. At that time it was a very loose association, there was no association except if a good deal was presented to them they would sit down and give it considerable consideration and I would participate with them, I would do some of the work or all of the work and I would sit down and discuss that with them and they would furnish the funds for the purchase of that particular deal or any other deal that was available.

Q. We are speaking now of your association at the time of this first conversation with Mr. Wilson?

A. That is correct.

Q. Did Mr. Wilson procure for you this information that you required in order to have the Sugarman association become interested in the purchase?

A. He secured all the information that was necessary. I believe he had it all with him, the cruises, the balance sheets and all the necessary information giving the detailed information of the entire project.

Q. Did he tell you where he had obtained that information? [45]

A. He told me he had obtained it from the trustee, Mr. Stevenot.

(Testimony of William Steinberg.)

Q. You did not negotiate with Mr. Stevenot directly then in obtaining this information?

A. No, sir.

Q. Now did you take this information and assimilate it and present it to the Sugarman interests?

A. I did. I took all the information I had and I assimilated it and assembled it and set it all up and mailed it all down to N. A. Sugarman.

Q. And did he express any interest in this purchase?

A. They did at the time.

Q. Did you subsequently become associated with them in any more direct form than you were at the time of the entry into this transaction?

A. Well subsequently to that time we formed a joint venture on a verbal basis. Mr. Sugarman had fifty percent in the transaction, a man by the name of Margolis had twenty-five per cent and I was supposed to have twenty-five per cent interest of the transaction.

Q. Now am I correct in saying that as a result of this information and the presentation of this deal to you you were able to make an offer to the trustee of Coastal Plywood on behalf of the J. J. Sugarman Company?

A. I was authorized at the time to present an offer to the—a preliminary offer, rather, to the Coastal Plywood [46] Company to see whether they would be interested in a cash offer on the purchase of the Coastal Plywood Company.

Q. Did you make such an offer to the trustee of Coastal?

A. I wrote a letter, yes sir.

(Testimony of William Steinberg.)

Q. Is this a copy of that letter, Mr. Steinberg?
(Exhibiting document to the witness.)

A. Yes—wait a minute—excuse me, yes, this is a copy.

Q. That is a copy of the letter?

A. That is correct.

Q. The original letter was signed, is that correct?

A. The original letter was signed and there was four copies, I think made of the original letter and given to all the interested parties.

Q. Do you know whether those were delivered or mailed?

A. I personally delivered it to Mr. Stevenot and I gave a copy of it to Mr. Carr and I gave a copy of it to Mr. Olson and I gave a copy of it to Mr. Shannon who represented the Coastal Plywood at that time.

Q. And this offer, you say, was the result of the initial contact by Alex Wilson?

A. That is correct.

Mr. McMurchie: Offer this as Petitioner's Exhibit next in order, your Honor. I believe you have seen it, Mr. Olson, the offer of July 22? You have seen it, have you not?

Mr. Olson: Yes.

Mr. Carr: What is the date of that? [47]

Mr. McMurchie: Offer of July 22, 1953.

The Court: It will be admitted in evidence as Petitioner's Exhibit Number Three.

(Testimony of William Steinberg.)

(The document referred to was marked Petitioner's Exhibit Three.)

The Court: July what?

Mr. McMurchie: July 22, 1953. May I read it now, your Honor?

The Court: Yes you may.

Mr. McMurchie: July 22, 1953, on the letterhead of William Steinberg, Attorney at Law, 114 Sansome Street, San Francisco 4.

“Coastal Plywood and Timber Company and Fred G. Stevenot, Acting Trustee for Coastal Plywood and Timber Company, 300 Montgomery Street, San Francisco, California.

Re: No. 12223 United States District Court.

Gentlemen:

On behalf of J. J. Sugarman Co. of Los Angeles, California, I am authorized to make an offer of purchase for them of all of the assets of the Coastal Plywood and Timber Company, a corporation, upon the terms and conditions hereinafter set forth.

The Coastal Plywood and Timber Company, having filed its petition for an arrangement under the provisions of Chapter 11, shall assign, transfer and convey to J. J. Sugarman Co. all of its assets hereinafter described, so as to enable it to [48] effectuate a plan for arrangement under said Chapter 11 as follows:

1. That the total purchase price is \$3,750,000.00 for all of the net assets of Coastal Plywood and Timber Company, consisting of land, timber, lumber, logs, cash, accounts receivable, rolling stock,

(Testimony of William Steinberg.)

plant, machinery, equipment, mill site, etc., as per Balance Sheet of December 31st, 1952, prepared by Hood and Strong, Certified Public Accountants, totaling \$4,555,310.80, or the Balance Sheet of June 30th, 1953, whichever is greater, free and clear of all contracts, conditional sales contracts, claims, liens, encumbrances, taxes, penalties, and assessments of every form and nature.

a. The sum of \$750,000.00 is to be paid within ten (10) days after acceptance and confirmation of this arrangement by the Court.

3. The balance of \$3,000,000.00 to be paid within ninety (90) days after acceptance and confirmation of this arrangement by the Court, so that J. J. Sugarman Co. can be given the opportunity of organizing a new corporation to take over the said assets, the pay the sum of \$3,000,000.00, and to provide adequate working capital for the corporation.

4. That out of the \$3,750,000.00 all contracts, conditional sales contracts, claims, liens, encumbrances, taxes penalties and assessments of every form and nature are to be paid in order of their priority, and the balance remaining is to be paid to the stockholders, so that J. J. Sugarman Co. [49] and its successors in interest shall receive a good and merchantable title to all of the assets purchased.

5. Upon acceptance and confirmation of this arrangement by the Court, J. J. Sugarman Co., Coastal Plywood and Timber Company, and the Trustee for the latter company, shall mutually agree upon a continuation of the business operations of

(Testimony of William Steinberg.)

said Coastal Plywood and Timber Company until J. J. Sugarman Co. or its successor in interest can take full possession of all of the assets in accordance with the terms hereinabove set forth, and all profits made or losses suffered from the date of acceptance and confirmation of the arrangement by the Court, shall accrue to J. J. Sugarman Co. or its successor in interest.

6. J. J. Sugarman Co. or its successor in interest shall not be responsible for any fees, costs or expenses, by virtue of this transaction being called to their attention.

Very truly yours, William Steinberg."

Q. Mr. Steinberg, this letter is dated July 22, 1953, is that correct? A. Yes sir.

Q. And it was not deposited in the mail?

A. No sir, it was delivered personally.

Q. Delivered personally to whom?

A. Mr. Stevenot, Mr. Carr and Mr. Olson. They were all at the conference there.

Q. That was delivered by you to this conference?

A. That is correct. [50]

Q. Where was this conference held?

A. In Mr. Stevenot's office.

Q. And it was delivered on the date of the letter, is that right?

A. I believe it was the day after the date of the letter.

Q. You believe that it was——

A. I think the letter was drawn up on a Thurs-

(Testimony of William Steinberg.)

day, and Friday morning I had the conference with them.

Q. Now prior to the preparation of this letter, this offer, had you had any discussion with Mr. Wilson with regard to his commission?

A. Well the first day Mr. Wilson came into the picture and presented this proposition to me I specifically asked him whether he was to receive a real estate fee on it and he definitely said——

Mr. Olson: If your Honor please, I am going to object to any testimony with regard to statements by Mr. Wilson to this witness on the ground that it is hearsay.

Mr. McMurchie: I believe the statements of a party litigant, your Honor, a petitioner in the case, are admissible.

The Court: It is still hearsay and a self-serving declaration.

Mr. Olson: Self-serving, your Honor, and not an admission, which I believe counsel is trying to establish. [51]

The Court: I will sustain the objection.

Q. (By Mr. McMurchie): Did you have a discussion with Mr. Stevenot on the payment of the commission?

A. I very specifically discussed with Mr. Stevenot the day I brought that letter into Mr. Stevenot and Mr. Carr——

Q. (By Mr. McMurchie): May I interrupt Mr. Steinberg. When did you first discuss with Mr.

(Testimony of William Steinberg.)

Stevenot the commission of a broker on his transaction?

A. The day I brought the letter in.

Q. And you had no prior conversation?

A. No, no prior conversation.

Q. Will you relate that conversation? Who were present?

A. Mr. Carr and Mr. Stevenot and Mr. Olson, and I specifically told them at that time that Mr. Wilson told me that if this deal were accepted that he would receive a fee from the trustee—from the Coastal, and on that day Mr. Stevenot and Mr. Carr and Mr. Olson told me that unless the Court authorized them they were not in a position to pay any fees whatsoever insofar as this deal was concerned, and I specifically told Mr. Stevenot and Mr. Carr and Mr. Olson that it was Mr. Wilson that brought this deal to my office and that we were not in any position to pay him and we were not going to pay him any fees in the picture.

Q. Isn't it a fact that under the conditions of your offer of July 22nd, you would not pay Mr. Wilson any commission for bringing this matter to your attention? [52]

A. That is correct.

Mr. Steinberg, in order to fix the date when this letter was delivered, I will call your attention that July 22nd was a Wednesday.

A. Well, it was two days, then. It was a Friday that I met them so it must have been two days after.

Q. That would be before or after this letter?

(Testimony of William Steinberg.)

A. After the letter.

Q. After the letter. You had no conversation with them on the Friday before the letter?

A. No sir.

Q. Well now, Mr. Steinberg, subsequent to this conversation with Mr. Stevenot did you have any discussion with Mr. Wilson in regard to that conversation?

A. Oh I told Mr. Wilson, I think a few days later when he came in from Oroville what my conversation was with Mr. Stevenot and Mr. Carr and Mr. Olson, and he told me, "Don't pay any attention to them, the offer would be put in."

Mr. Olson: If your Honor please, the same objection.

The Court: I will have to sustain it.

Q. (By Mr. McMurchie): Subsequent to that time did Mr. Wilson make any statement to you——

The Court: Just a moment. I want to be clear. I simply am going to sustain the objection as to what Mr. Wilson said, and as to what this man told Wilson I will overrule the objection [53] as to that.

Mr. Olson: The objection was not addressed to that part, your Honor.

The Witness: Oh, pardon me.

Q. (By Mr. Murchie): Did you make any arrangement with Mr. Wilson subsequent to this conversation and this offer of July 22nd, did you make any arrangement with Mr. Wilson in regard to the payment of the expenses incurred by him?

(Testimony of William Steinberg.)

A. I believe about five months afterwards, about November of 1950—I don't know the exact date—oh, August, excuse me, August, about a month afterwards, when I was finally convinced that both Mr. Stevenot and Mr. Carr and Mr. Olson would not take care of Mr. Wilson I then told Mr. Wilson that in the event that I would receive any money from the Sugarman group or out of my percentage of the Sugarman group that I would see that his expenses would be taken care of in the sum of \$25,000.00 for him and \$10,000.00 to pay Mr. Kewin, and during my setup with the Sugarman Company I made provision for \$25,000.00 for Mr. Wilson and \$10,000.00 for Mr. Kewin until some time in January when the Sugarmans completely repudiated——

Mr. Dudley: Your Honor, could we have whatever it is the witness is testifying from?

The Witness: Certainly, go right ahead.

Mr. McMurchie: This is a copy? [54]

A. This is the original.

Mr. McMurchie: I think you have the copy.

Q. Mr. Steinberg, was this to be in lieu of any commission that Mr. Wilson was to charge?

A. It had nothing to do with any commission whatever, with regard to any arrangement he might have made with the trustee or the attorney for the trustee. It was my understanding throughout that he was in constant communication with the trustee and the attorney for the trustee in regard to this transaction. What if any arrangement he made with

(Testimony of William Steinberg.)

them subsequent to my meeting with Mr. Stevenot I don't know.

Q. Was this arrangement with Mr. Wilson to be effective in the event a commission was paid by the trustee?

A. It was my understanding that if Mr. Wilson ever got a commission from the trustee, as far as I would have had to pay him out of my own hand for his expenses, that he would waive it.

Q. In other words, this was strictly an arrangement for the time and expenses Mr. Wilson had gone through in procuring the Sugarman Company to get interested in this transaction, is that correct?

A. That is correct, just for the expenses that was there. Mr. Wilson explained to me how long he was on this particular transaction and the thousands of dollars he spent out of his pocket—— [55]

Mr. Olson: Same objection, your Honor.

The Court: Yes, I will sustain the objection as to what Mr. Wilson said.

Mr. McMurchie: This is that letter of August 25, is that correct? A. That is correct.

Q. And that is your signature?

A. That is correct, that is my signature.

Mr. McMurchie: I will introduce this as Petitioner's next in order.

The Court: It will be admitted in evidence as Petitioner's Exhibit Four.

(The document referred to was marked Petitioner's Exhibit Number Four.)

The Court: What is the date of it, August what?

(Testimony of William Steinberg.)

Mr. McMurchie: August 25, 1953, your Honor.

The Court: All right, thank you.

Mr. McMurchie: It is on the letterhead of Alex E. Wilson, addressed to Alex E. Wilson, 155 Montgomery Street, San Francisco, California.

"Dear Sir:

This is to acknowledge that you brought to my attention the sale of the Coastal Plywood Company and that I in turn brought it to the attention of N. N. Sugarman of Los Angeles who evidenced a great interest in purchasing the same. [56]

When and if N. N. Sugarman or his associates purchase the Coastal Plywood Company they have agreed to compensate me reasonably.

Out of this compensation I hereby agree to pay to Alex W. Wilson the sum of \$25,000 and to Redge Kuhen the sum of \$10,000.

Very truly yours,

William Steinberg."

Q. (By Mr. McMurchie): You say Mr. Steinberg that this was—you say that this was to be a matter of repaying Mr. Wilson for the expenses that he had been put to in bringing this matter to the attention of yourself and the Sugarman interests, is that correct? A. That is correct.

Q. How did you happen to enter into such an agreement with Mr. Wilson?

A. The reason I entered into such an agreement with Mr. Wilson, I was firmly convinced after talking to Mr. Stevenot a number of times and Mr. Olson and Mr. Carr that they wouldn't pay Mr.

(Testimony of William Steinberg.)

Wilson anything under the circumstances, and knowing the amount of work that Mr. Wilson did I told him that out of any amount of money that I would receive that I would see that his expenses would be taken care of, and I asked him what he thought his expenses were and he told me \$25,000.00, and that is what it was. [57]

Q. Now Mr. Steinberg was this offer of July 22nd which we have read accepted by the trustee of Coastal Plywood?

A. At the end of the discussion that Friday that we had it appeared that we were about a half a million dollars short of what the deal could possibly be put through. Mr. Stevenot and Mr. Olson took their accounts out and said it would be impossible, virtually impossible to get the stockholders' consent after all expenses were paid unless the offer was increased by a minimum of a half a million dollars.

Q. Did you convey that information to your parties that you represented, N. N. Sugarman?

A. I did.

Q. Did you ever receive any correspondence from Mr. Sugarman or any of his associates in regard to this Coastal Plywood?

A. Well, after the three million seven hundred fifty thousand, that we couldn't make it on that basis,—we got no encouragement, put it that way, to make it on that basis, \$3,750,000.00, I notified Mr. Sugarman what the setup was from the standpoint of the Coastal Plywood Company, and I took

(Testimony of William Steinberg.)

a trip subsequent to that time to Los Angeles and discussed the entire matter with him in detail, and at that time he called in some other associates with him, amongst whom was, I think, Mr. Margolis.

Q. Were there any conditions that the Sugarman interests set up before they would be interested in purchasing the assets of Coastal in that transaction? [58]

Mr. Olson: If your Honor please, that definitely calls for hearsay.

The Court: Just a moment. Mr. Clerk, will you move that microphone.

Now what is the objection?

Mr. Olson: The objection, your Honor, is simply that all the testimony that the witness is giving calls for hearsay statements, to which we object, and we move that all statements of that nature just given to the preceding question be stricken.

The Court: Well, does this go to the negotiations between Coastal Plywood and Sugarman in which you were the intermediary, and were they conveyed to Coastal Plywood?

A. Yes, we negotiated with Coastal Plywood from July 25, or the July date, clear up until the consummation.

Mr. McMurchie: I am approaching a new subject, your Honor. I am attempting to go into the resale which was a requirement of the Sugarman before they would complete the purchase.

The Court: Requirement of whom?

Mr. McMurchie: Requirement to Mr. Steinberg

(Testimony of William Steinberg.)

that he arrange a resale before they would be able to present a new offer to Coastal Plywood, and it is important in this case to show——

The Court: I know it is important, but the question is how does it get around the hearsay rule?

Mr. McMurchie: Well it is one of the facets of the activities of Mr. Wilson, your Honor, which were of benefit to this estate. [59]

The Court: Well is it hearsay to the subject matter of the action? That is all I want to know. My own thought is that this may be an exception to the hearsay rule in that respect, being that it is a part of the *res gestae* of the transaction.

Mr. Hildebrand: That is it, it all ties in and it all follows through, because, in other words, Sugarman insisted that we show that there be a resale of the property all arranged in advance before they would go ahead with it, and this is one step in achieving that.

The Court: Unless it is a part of the *res gestae* it is probably hearsay, though, as to the trustee and the interest of the bankrupt estate.

Mr. Olson: That is correct, your Honor. In that connection it isn't shown here that any of these matters were called to the attention of the trustee or the trustee has any knowledge——

The Court: Well I don't think that is particularly necessary if it occurred as a component part of the transaction so that it was a part of the transaction itself, or even if it led up to it it might still be admissible under the *res gestae*.

(Testimony of William Steinberg.)

Mr. McMurchie: I think it did, your Honor, just as all the other negotiations with other purchasers, not alone with respect to this matter, would certainly be admissible to show [60] the services rendered by the petitioner in the negotiation of that sale.

Mr. Hildebrand: In other words, it is our point that Mr. Wilson following this conversation even went to the extent of arranging a resale of all of this lumber to get the deal over so that these men down in Los Angeles could make a million and half before they ever got into the deal, it was all set up for them, and then the trustee takes advantage of the deal that he set up for them.

The Court: Well that, of course, is properly argument Mr. Hildebrand, but the only proposition I want to understand clearly is the relationship of this evidence to the point at issue or to the issue of the case, to determine whether or not this is a hearsay transaction or whether it comes within the exception to the rule.

Mr. McMurchie: I think they are all services performed by the Coastal Plywood in order to find a purchaser for the assets.

The Court: That, of course, may or may not be true; I mean that is one of the issues that has to be determined; but since it goes to that I would be inclined to overrule the objection and permit the testimony, and if we find out it has no relationship—I'll make the ruling without prejudice to a motion to strike and I will just have to pass on

(Testimony of William Steinberg.)

the evidence after having looked at what was said, because I deem this to be a close enough question that I should permit it to come in, and [61] then you can make such motions as you desire. You may reserve your right to move to strike it and I will make my ruling overruling the objection without prejudice to that right.

Q. (By Mr. McMurchie): Mr. Steinberg, did you receive a letter of June 30, 1953, from Mr. Barney Margolis? A. Yes I did.

Mr. Olson: If the Court please, we have examined this letter, it is a photostatic copy, and we would like to make the objection that it is not the best evidence of the letter. I assume counsel proposes to have the witness testify in regard to it and to offer it in evidence.

Mr. McMurchie: I do, yes, your Honor.

The Court: Have you asked for the original?

The Witness: I have the original—I haven't it here with me, but I have the original of this in my files, I think I have.

Mr. Dudley: If he has the original in his files, I don't understand why he went to all the trouble to prepare a photostatic copy——

The Witness: I didn't prepare it.

Mr. Dudley (Continuing): and present it here in Court. They should produce the original.

The Court: The original *is* certainly is the best evidence, and if there is going to be any argument about it I will have to sustain the objection, but

(Testimony of William Steinberg.)

I will give you the right to substitute the original in place of this. [62]

Mr. McMurchie: I would like to introduce this at this time.

The Court: Well it is not admissible in evidence. You are right up against a stone wall in that. Although I am not going to foreclose you from the opportunity to produce it if counsel wants to insist on the original. Is there any way as a practical matter this might be worked out so that you might have the original presented to you for verification and so on?

Mr. Olson: Yes, your Honor, that is the only basis for the objection. We have never seen this letter before and we want to be certain it is in existence before we——

The Court: Well, under that statement I will reserve a ruling on this objection until the time that the original is produced, but I will permit you to go ahead, and all the testimony will be stricken if the original is not produced, or unless the basis or the foundation laid for the production of secondary evidence.

The Witness: I have the original of this letter. I didn't know I should have brought it up here or I would. I was not subpoenaed—I was subpoenaed, but not duces tecum with all of the documents.

The Court: I understand that. Go ahead and ask your questions about the letter. They will be

(Testimony of William Steinberg.)

all subject to the objection and subject to a motion to strike unless the original is produced. [63]

Q. (By Mr. McMurchie): Will you read that letter for us, Mr. Steinberg?

A. "210 South Beverly Drive, Beverly Hills, California, June 30, 1953.

Mr. William Steinberg, Attorney at Law, 582 Market Street, San Francisco, California.

Dear Mr. Steinberg:

(Reading letter.)

Very truly yours, Barney Margolis."

Q. (By Mr. McMurchie): Mr. Margolis is an associate of Mr. Sugarman, is he?

A. Yes sir.

Q. Pursuant to that letter were you able to obtain resales of the assets of Coastal Plywood?

A. Well a few months subsequent to that letter, yes.

Q. And how were you first put in contact with the purchaser of these resales?

A. The ultimate sale of the timber and various things, I was put in contact with one of the principals through Mr. Wilson.

Q. And what was that principal's name?

A. His name was Fred Holm, of Gualala, California.

The Court: What is the name?

A. Fred Holm, Gualala, California.

Q. (By Mr. McMurchie): Where did you first meet Mr. Holm?

A. I met Mr. Holm through Mr. Wilson.

(Testimony of William Steinberg.)

Q. He was brought to your office? [64]

A. Yes, sir.

Q. Now you say that resales of the assets of Coastal Plywood were made?

A. That is correct.

Q. Can you tell me who purchased the various portions of the assets of Coastal Plywood and Timber Company?

A. It was divided into four parts. One portion of it was sold to Fred Holm. The mill and the equipment in the mill was sold to Morris and Smith and Larden and McCray. They formed a corporation called the California Redwood Company, I believe. A portion of the timber was likewise sold Larden and McCray and Smith and Morris under the same corporation name. They were the successors in interest to Smith and Morris and Larden and McCray. One portion was sold to Hollow Tree Lumber Company.

Q. Can you tell me what the total of the resales was?

A. Well I haven't a piece of paper here to add them up, but if my memory serves me best, at the time of the contract, the original contract that I drew up was sold as follows—

Q. That is what I am interested in, the original contracts, who were the parties to the contracts on behalf of the Sugarman Lumber Company.

A. I was originally the party to the contract and I took the contracts and assigned them over

(Testimony of William Steinberg.)
to Sugarman Lumber Company and they in turn drew their new contracts up. [65]

Q. Can you tell me who the purchasers were, what they purchased and what they purchased it for approximately?

A. Well at the time I entered into the contracts the thing was purchased as follows: The Smith and Morris and Larden and McCray bought the mill and mill equipment for \$640,000.00, and if my memory serves me best, they bought units three and four, which was two hundred and twenty million feet of timber for the aggregate amount of \$2,200,000.00, and they bought the seventeen thousand acres of land at ten dollars per acre, which is \$170,000.00, and they bought the inventory. At the time, at the statement of September, I think, 30th, or October 30th, I think they bought the inventory for the sum of \$900,000.00, and they bought the unit number one for one million three hundred and fifty thousand in the aggregate, and they bought the land for seventy thousand. Fred Holm bought unit number two for a total of \$800,000.00.

Q. Those contracts were executed?

A. They were all executed. However, subsequent to that time some of these contracts were revised upward and downward depending upon the inventory as they ultimately were shown to be as of the date of closing.

Q. At the time of their original execution, what were the resales, total value of resales? Can you

(Testimony of William Steinberg.)

tell me what the value was, what the total value was?

A. Giving credit to two hundred fifty thousand for accounts receivable and cash on hand, and giving credit for the rolling [66] stock of two hundred and fifty thousand, the total resale on the aggregate being paid back over a period of seven years would approximate seven million dollars.

Q. The resales approximate seven million dollars? A. That is correct.

Q. Can you tell me what the purchase price paid to Coastal Plywood and Timber Company was on those assets?

A. I think four million five hundred and sixty thousand, but you have to add on to that, however, about seven hundred thousand in interest which the Sugarman Lumber Company would have to pay over a period of ten years on their unpaid balance of two million eight hundred thousand dollars.

Q. Still a substantial profit to the Sugarman Lumber Company?

A. If all the contracts are fulfilled it will be a substantial profit, yes.

Q. Now can you tell me how you were first placed in contact with the Hollow Tree Lumber Company?

A. I was placed in contact with the Hollow Tree Lumber Company through Fred Holm.

Q. And how were you placed in contact with Smith and Morris?

A. They are Hollow Tree Lumber Company.

(Testimony of William Steinberg.)

Q. They are Hollow Tree Lumber Company?

A. They are Hollow Tree Lumber Company. They own it.

Q. So that all of these purchasers on the resale of these assets came to you through Fred Holm?

A. That is correct. [67]

Q. And Fred Holm came to you through Alex Wilson? A. That is correct.

Q. Now I notice that your offer of July 22nd is in the name of J. J. Sugarman Company?

A. That is correct.

Q. Can you tell me why the offer was in that name?

A. The reason it was in that name is because J. J. Sugarman was the president of the company and J. J. Sugarman Company has the financial ability and stability to fulfill any contract to that extent.

Q. The name being used by the people you transacted business with? A. That is correct.

Q. Now the final purchase was made by the Sugarman Lumber Company, a California corporation, is that correct? A. That is correct.

Q. Who composes that corporation?

A. Well at the time the corporation was organized there were no—I think N. A. Sugarman and M. Dicker and Barney Margolis, they formed the corporation without any stock issuance, and I don't think there is any stock issuance to this day in that corporation.

Q. It was formed for the purpose of taking over these assets?

(Testimony of William Steinberg.)

A. That is right, taking over these assets.

Q. So that the original offer of July 22nd and the final [68] purchasers are one and the same persons?

A. That is correct.

Q. Now included in these assets of Coastal Plywood and Timber Company was there any personal property in addition to the real property?

A. Yes, I think I stated that the trustee gave Sugarman Lumber Company credit, I believe, for cash and accounts receivable for the sum of two hundred fifty thousand plus or minus at the date of closing and rolling stock and logging equipment which the trustee did not have any special value set on, that was altogether with the mill, but in our calculations we set up a figure of \$250,000.00 as the going price at that time.

Q. Does that include the log deck?

A. No, the log deck was included in the inventory of the lumber and the log deck.

Q. What was the value of the inventory?

A. At September 30th, I believe, Coastal Plywood had a value of \$1,350,000.00, if my memory serves me right, and our value on a cash basis was \$900,000.00. So our sale was for \$900,000.00.

Q. That is the personal property?

A. No, that is the inventory and log deck.

Q. What would be the total value of the personal property? Can you give me that figure?

A. You mean the rolling stock?

Q. The rolling stock, log deck, lumber inventory?

(Testimony of William Steinberg.)

A. Well, you have to take one million seven hundred fifty [69] thousand, the book value that they put down and what we put down of nine hundred thousand and then you have to add on to that rolling stock that we put a value on of two hundred fifty thousand, and cash and accounts receivable which we received credit of, plus or minus, at the date of closing of two hundred fifty thousand.

Q. Approximately \$1,750,000.00 purchase price, is that true?

A. Well then you have to go one step further: you have the mill and mill equipment which we sold for six hundred forty thousand. They had a value on it of one million two hundred thousand on their books, which we had a fair value of six hundred forty thousand. I believe the machinery we put in had a value of around four hundred thousand, and on the buildings we placed a value of on around two hundred forty thousand. In other words, in their equipment and mill, if I might state, they had a complete redwood sawmill and a complete planing mill, which cost much more than four hundred thousand, which we placed a value on mill equipment at four hundred thousand, and the buildings and the spur track of around two hundred and forty thousand, and that is how we arrived at six hundred and forty thousand for the sale price to Morris and Smith and Larden and McCray.

(Testimony of William Steinberg.)

Q. Didn't you sell the lumber inventory and the log deck to Morris and Smith?

A. That is correct.

Q. What was the price? [70]

A. Nine hundred thousand plus or minus at the date of closing.

Q. Did you also sell the rolling stock?

A. No, the rolling stock is being sold now.

Q. What did you estimate the value of that to be?

A. We estimated two hundred and fifty thousand six months ago, but I assume a great deal of depreciation has entered into it since that time.

Q. You are not capable of placing a value on the personal property? A. No I am not.

Q. Other than the specific items you have mentioned? A. That is correct.

Q. Well then as I understand your testimony Mr. Steinberg there is no question but what Mr. Wilson is the person who brought this sale of the Coastal property to you?

A. There is no question about it.

Mr. Olson: I will object to that and ask that it be stricken, your Honor, on the ground it is a conclusion. His previous testimony is before the Court.

The Court: The objection is sustained. You can argue the question.

Q. (By Mr. McMurchie): Now in your offer of July 22nd and in your conversations with the Coastal Plywood and Timber Company and with the trustee, Mr. Stevenot, you repeatedly stated that

(Testimony of William Steinberg.)

Sugarman Lumber Company would not pay Mr. Wilson's commission, is that correct? [71]

A. I told Mr. Stevenot, Mr. Carr and Mr. Olson specifically that we would not take care of Mr. Wilson's or any other agent's commission in regard to that particular transaction.

Q. Can you tell me why Sugarman Lumber Company refused to pay the commission?

A. Well it wasn't a question of refusing, it was a question of getting an offer net to us. That we were not paying anybody except we made an offer.

Q. Who did Sugarman expect to pay the commission?

A. Sugarman didn't expect to pay commission to anybody.

The Court: Who was to pay the commission, if any, of the resale?

A. There were no commissions paid on any resales whatever. I was in a joint venture with them and that was my job to get these resales and I got these resales and I set up these resales and completed my part of the bargain insofar as the Sugarman Lumber Company was concerned.

Q. No commission was paid by either side on the resale?

A. No sir. They didn't pay them or they didn't pay me or anybody else.

Q. Have you ever been paid by the Sugarman Lumber Company? A. No sir.

Q. And you have never paid Mr. Wilson the \$25,000.00? A. No sir.

(Testimony of William Steinberg.)

Q. As I understand you to say, the Sugarman Lumber Company has [72] refused to pay you anything for your services in this matter, is that right?

A. That is correct.

Q. And they have disclaimed any joint venture relationship that you had with them?

A. They have, yes.

Q. They have disclaimed that?

A. That is correct.

Mr. McMurchie: I think that is all.

The Court: You may cross examine.

Cross Examination

Q. (By Mr. Olson): Mr. Steinberg, when did you first meet Mr. Stevenot, the trustee?

A. Oh I met Mr. Stevenot before July 22nd many times.

Q. You were familiar, were you, with Coastal Plywood and Timber Company? A. I was.

Q. The fact that it was in re-organization?

A. Yes sir.

Q. The fact that it had large timber properties, including a mill? A. Yes sir.

Q. And you knew, did you not, that Coastal Plywood and Timber Company was the — strike that. You knew, did you not, that the trustee was seeking re-organization plans and proposals for the re-organization of Coastal Plywood and Timber Company? [73]

A. Yes I did, about a year before July—before this date.

(Testimony of William Steinberg.)

Q. Back in July of 1952 was that?

A. 1952, yes sir.

Q. It is also true, is it not, that the trustee, Mr. Stevenot, had given you various reports, maps, financial statements, etc., concerning the company?

A. In 1952 I received some maps—not maps, just a financial statement, but I received nothing from Mr. Stevenot except subsequent to July 22, 1953. I did receive statements and maps and other things, yes sir.

Q. And you had received prior to July 1953 certain inventory reports, had you not, log and lumber inventories from the debtor?

A. From Mr. Stevenot?

Q. Yes.

A. Not in relation to this transaction. I did receive from Mr. Stevenot log and lumber inventories, and I think toward the end—in the middle of 1952. Subsequent to July 22nd I did receive log reports and other pertinent information from Mr. Stevenot.

Q. In July 1953 you brought to Mr. Stevenot this Petitioner's Exhibit Three, is that correct?

A. That is correct.

Q. Isn't it a fact Mr. Steinberg that all you brought to the trustee was a draft of this tentative offer which you proposed to submit, to get his reaction to it? You also [74] submitted copies to trustees' counsel and counsel for the debtor?

A. That is correct.

Q. You wanted their reaction, is that correct?

A. That is correct.

(Testimony of William Steinberg.)

Q. And you submitted it in draft form to get their reaction, didn't you?

A. I submitted it in final form to sign it, that is correct.

Q. Isn't this the copy that you submitted to Mr. Stevenot (exhibiting to witness)?

A. I submitted the original to Mr. Stevenot and the copies were attached thereto.

Q. But the trustee did not accept this offer?

A. No sir. He said at that time—all of you said at that time it was a half of a million dollars too little.

Q. You were then acting on behalf of J. J. Sugarman Company of Los Angeles, is that correct?

A. N. A. Sugarman, that is correct.

Q. And in August of 1953 you sent to Mr. Alex Wilson this Petitioner's Exhibit Four, is that correct?

A. I didn't send it, I typed it up to him, yes, that is correct.

Q. You typed it up to him?

A. Alex Wilson typed it up and I signed it, that is correct.

Q. You gave this letter to Mr. Wilson at Mr. Wilson's request, did you not? [75]

A. Not at his request specifically, but in our conference under the circumstances I told him that it was my opinion that he wouldn't get anything at all out of Coastal Plywood as far as I could see, but whatever his costs were, whatever I would get

(Testimony of William Steinberg.)

out of the situation, out of our venture, I would see that his costs were taken care of, and I asked him if twenty-five thousand was fair and he said it was.

Q. You told him this because the trustee told you he would not pay any commission?

A. That is correct. Not only the trustee, but the attorneys likewise told me they wouldn't pay him a commission.

Q. They also told you, did they not, that Mr. Wilson was not representing the trustee?

A. I don't know whether they said that or not. What they did say was that they were not authorized under the law to provide for any commission, to pay him any commission.

Q. As a matter of fact, Mr. Steinberg, even before this letter, Petitioner's Exhibit Four, which you gave to Mr. Wilson, you had orally told Mr. Wilson you would pay him compensation, did you not?

A. I told him orally that if they didn't pay him anything I would see that his expenses were taken care of, if I got anything out of it I would pay him \$25,000.00 to take care of his expenses on the transaction.

Q. You told him you would pay him as early as July 1953, didn't you? [76]

A. No, it wasn't until August that I told him.

Q. And this agreement then was verbal which, of course, was later put in writing and is Petitioner's Exhibit Four?

(Testimony of William Steinberg.)

A. That is right, just a week or so before that when I was convinced that the Coastal wouldn't pay him anything I gave him that letter.

Q. Following that offer of yours of July 22, 1953, Mr. Steinberg, J. J. Sugarman Company dropped out of the picture, didn't they?

A. That is correct.

Q. Said they weren't interested?

A. That is correct.

Q. You then began representing a Mr. Jamisen, didn't you?

A. That is correct.

Q. Mr. Jamisen was interested in buying this property?

A. Correct.

Q. During what period did you represent Mr. Jamisen?

A. I didn't represent Mr. Jamisen, I worked with Mr. Jamisen on the same basis I worked with the Sugarman's just in September and October—September of 1953 and October of 1953, I think up to October 9th or 10th of 1953.

Q. During that period you were endeavoring to present an offer on behalf of Mr. Jamisen?

A. That is correct.

Q. Did Mr. Jamisen also lose interest?

A. Mr. Jamisen couldn't come up to his end of the deal, so he dropped out of the picture. [77]

Q. Now during this period you had numerous conversations with the trustee, did you not?

A. Oh, definitely.

Q. Got various reports?

A. Yes.

Q. —maps and so forth?

(Testimony of William Steinberg.)

A. Most beneficial cooperation from the trustee and their attorneys.

Q. During that period Mr. Steinberg on one of your visits to the trustee's office you learned that Fred Holm had once inquired of the trustee in regard to the possibility of buying a small piece of timber, didn't you?

A. No, never from the trustee. It wasn't until months afterwards that I found out that Fred Holm talked to the trustee. I found out about Fred Holm through Alex Wilson. I told—if I may explain how Fred Holm came into the picture—I told Alex Wilson that it would help the deal out a great deal from our standpoint if a portion of it could be sold. During July of that year and the first part of August of that year I was negotiating with the Union Lumber Company to see if they would take units one and two out of the picture. If they would take units one and two out of the picture, why, then we wouldn't have to worry about any portion of it, but the Union Lumber Company at that time were not in a position to take it, so they turned it down.

So at that time I asked Mr. Wilson I said, "Now, Alex, here [78] is our position in the matter: You have your in with the trustee and with Mr. Carr and that situation. Now if there is anybody that you know of that can take a portion of this timber, why, I think we could set this deal up, just so that we can be protected to the tune of at least seven or eight hundred thousand dollars, the Sug-

(Testimony of William Steinberg.)

arman people would put up," and I thought they would put up and Alex Wilson at that time said yes, he knew a man by the name of Mr. Holm in Gualala and Alex Wilson got on my telephone at that time and I can check my telephone calls to see what date he called him and he called Mr. Holm and introduced me to Mr. Holm on the telephone and he told Mr. Holm at that time that I was representing these people, the Sugarman, and that if he would come down here he could get unit two on the payment of a small amount of money, and Mr. Holm made a date, I think four or five days later, and he came down and Alex Wilson brought Mr. Holm into my office and from that day on Mr. Holm and I made the various transactions which finally consummated, and it wasn't until months afterwards, months afterwards, that I found out that Mr. Holm wrote a letter to the trustee inquiring about unit number two.

Q. Have you ever been attorney for Mr. Holm, Mr. Steinberg?

A. Yes, subsequently to that time, yes.

Q. During what period were you attorney for Mr. Holm?

A. Oh, from August or September on, middle of September. [79]

Q. (By the Court): When, what year?

A. 1953.

The Court: Now gentlemen we have arrived at the hour of five o'clock and I am not going to run

(Testimony of William Steinberg.)

the session any further tonight. I can take this matter up at nine o'clock tomorrow morning.

(Thereupon after discussion between Court and counsel the further hearing of this matter was continued to Tuesday, July 6, 1954, at eleven o'clock a.m.) [80]

Tuesday, July 6, 1954—11:00 A.M.

The Clerk: Case No. 12,223, in re: Coastal Plywood & Timber Company, further hearing on agent's commission.

Mr. McMurchie: Ready.

Mr. Olson: Ready.

The Court: Gentlemen, are you ready to go forward? Have we completely concluded as far as Mr. Steinberg is concerned?

Mr. Olson: No, your Honor, I was cross examining him.

The Court: Yes. All right, will Mr. Steinberg then take the witness stand, and you may conclude your cross examination.

WILLIAM STEINBERG

a witness for the Petitioner, resumed the witness stand, previously sworn.

Mr. McMurchie: If your Honor please, — Mr. Steinberg has produced the letter from Mr. Margolis which we were discussing at the last hearing. Counsel asked to see the original of that letter and I have it now. I ask that that letter be introduced as Plaintiff's Exhibit next in order, your

(Testimony of William Steinberg.)

Honor. This is a letter from Mr. Margolis dated June 30, 1953, which Mr. Steinberg was testifying about.

The Court: A letter from Margolis to Steinberg, is it?

Mr. McMurchie: That is correct, your Honor, dated June 30, 1953.

The Court: Let's see, the next exhibit in order—this is [83] Petitioner's exhibit, is it?

Mr. McMurchie: That is correct. We have had Petitioner's Exhibits 1, 2 and 3.

(Discussion in regard to exhibit number.)

The Court: This will be Petitioner's Exhibit 5.

Mr. McMurchie: I also ask, your Honor, permission to substitute a photostatic copy for that exhibit.

The Court: Is that satisfactory?

Mr. Olson: Satisfactory.

The Court: All right, a photostatic copy may be submitted in lieu of the original.

(The document referred to was marked Petitioner's Exhibit No. 5.)

Mr. McMurchie: I also understand that Mr. Steinberg has a correction in his testimony that he would like to make.

The Court: Mr. Steinberg, you may make it, then. What is your correction, sir?

The Witness: There are two corrections: One is at the time that letter I think is dated, July 22nd was given to Mr. Stevenot and Mr. Carr and Mr. Olson and Mr. Shannon, I believe there was a

(Testimony of William Steinberg.)

prior meeting at that time to discuss the general terms, I believe it was the Friday before, it was the 17th of July, if I remember correctly, and then subsequent to that meeting this letter was introduced—I mean given to them on July 22nd, I delivered it personally, and that was as to form also, [84] and Mr. Stevenot and Mr. Carr and Mr. Olson, after they examined that letter, Mr. Stevenot stated that that offer was at least \$500,000 too little to be submitted.

The Court: Gentlemen, we will take a brief recess.

The Clerk: To get the work sheet before we go forward, so we will get these exhibits straight.

(Recess.)

The Court: Now then, this letter has been admitted as Petitioner's Exhibit No. 5, Mr. Clerk, a photostatic copy.

All right, Mr. McMurchie, have you made all of the—that is, you have the letter offered as an exhibit, and you asked Mr. Steinberg to correct his testimony. Is that all——

Mr. McMurchie: Have you corrected your testimony as far as you are concerned, Mr. Steinberg?

The Witness: Yes, sir.

Q. You are satisfied with your testimony as it now stands? A. Yes, sir.

Mr. Olson: Shall I proceed, your Honor?

The Court: Yes.

(Testimony of William Steinberg.)

Cross Examination—Resumed

Q. (By Mr. Olson): To make sure that I understand you correctly, Mr. Steinberg, you first learned about the Coastal Plywood Company in July, 1952, is that right?

A. July of 1952, yes, some time during that period, yes sir.

Q. And you then knew that the Coastal Plywood and Timber Company [85] was a debtor in reorganization, did you not?

A. I did.

Q. And that reorganization proposals should be submitted to the trustee?

A. Yes, sir.

Q. In fact, you had called upon the trustee several times prior to July, 1953, had you not?

A. Yes, sir.

Q. And obtained certain reports and information, including a cruise report?

A. Yes, sir.

Q. And in June, 1953, you met Mr. Alex E. Wilson for the first time?

A. I believe it was in May—it either was in May—I think the early part of May, I believe.

Q. Did Mr. Wilson submit a definite proposal or offer to you at that time?

A. Mr. Wilson came in to see me, he said that the Coastal Plywood was for sale, and I asked him what his connection with it was, and he said that he sold properties for them and that he could deliver the Coastal Plywood.

I asked him for what price could the Coastal Plywood be delivered, because I knew about the Coastal Plywood.

(Testimony of William Steinberg.)

He said if he could get four million dollars for all the assets that he could put it through, and I asked him at the same [86] time what his position was in the matter, and he said he was a real estate broker.

I said, "How will you be paid?"

He said, "I will be paid a regular real estate commission from the trustee."

I said, "Are you authorized to give me all the necessary information in connection with it?"

And he said he was.

Mr. Olson: If your Honor please, I will move that the statements of Mr. Wilson to Mr. Steinberg be stricken on the ground they are self-serving.

The Court: They will be stricken.

Q. (By Mr. Olson): Then on July 22, 1953 you brought to the trustee a preliminary offer on behalf of J. J. Sugarman Co. to buy these assets, is that right?

A. I think it was before July 22. After the last time we were here, Mr. Olson, it was called to my attention they asked for a form. I remember they had another meeting before July 22—I think it was—to the best of my recollection it was on the 17th when we met and we discussed it informally—I believe a letter informed me, they asked me about the form that I wrote, wherein they discussed the amount and everything connected with it.

Q. You had been in to see the trustee several times, hadn't you—— [87] A. Yes, yes sir.

Q. ——during that year prior to July, 1953?

(Testimony of William Steinberg.)

A. Yes.

Q. Now this offer that you brought in on July 22, 1953, was to buy the assets for \$3,750,000, is that correct?

A. That is correct.

Q. And did the trustee accept this offer?

A. The trustee didn't accept the offer. It was presented to him in that way. He said \$3,750,000 wouldn't take it, that they needed at least \$500,000 more, not only to cover the indebtedness outstanding, but to take care of the stockholders and their indebtedness, at least up to \$4,250,000.

Q. In other words, the trustee told you it would take at least \$4,250,000, is that correct?

A. That is correct, according to their statement it would take a minimum of that in order to clear everything up.

Q. A quarter of a million dollars more than Mr. Wilson had indicated?

A. That is correct.

Q. Now, Mr. Steinberg, you testified last time that you had called upon the trustee on July 24, 1953, two days after the offer was brought in, and in the course of this meeting the trustee told you, did he not, that Mr. Wilson would not receive any compensation from him?

A. At the time I brought the letter in, the original form letter, I think it was before the one submitted on July 22, [88] wherein you and Mr. Carr and Mr. Stevenot was there, I brought up the question that Mr. Wilson brought this matter to our attention and it was my understanding that he was to get a fee out of it, I mean a regular commis-

(Testimony of William Steinberg.)

sion, and Mr. Stevenot and you and Mr. Carr were very emphatic and stated specifically that Mr. Wilson was not to receive any fees or could not receive any fees.

Q. You relayed that statement by the trustee to Mr. Wilson, did you not? A. Yes, sir.

The Court: When was this?

A. This was after July 22, when I finally brought the letter to Mr. Stevenot.

The Court: Was it during the final negotiations, or during the preliminary negotiations?

A. It was all during the preliminary negotiations.

Q. (By Mr. Olson): And then, Mr. Steinberg, you agreed with Mr. Wilson, first verbally and then in a letter, that you would pay Mr. Wilson, \$25,000 for bringing the debtor to his attention, isn't that correct?

A. No, that wasn't it. After Mr. Wilson told me, weeks afterwards, that he didn't think that the trustee would pay him any fees under the picture, I told him that I was getting a substantial fee out of it if the thing went through, and that I would take care of his costs, take care of his—\$25,000 was what Mr. Wilson's costs were—he came in and showed me a tremendous [89] volume of letters and everything that went with it—and Mr. Kuhen, who brought Mr. Wilson to my office, would be taken care of to the sum of \$10,000, and I said, "Mr. Wilson, you draw up your own agreement as

(Testimony of William Steinberg.)

you see fit and I will sign it," and I believe he drew that little agreement and I signed it.

Q. You are speaking of Petitioner's Exhibit 4, the letter of August 25, 1953, is that correct?

A. Yes.

Q. Who drew up this letter, did you or Mr. Wilson?

A. No, Mr. Wilson drew up this letter.

Q. Did you give him the language to put in the letter?

A. Yes, I did.

Q. Did you give him this language, Mr. Steinberg:

"When and if N. N. Sugarman or his associates purchase the Coastal Plywood Company they have agreed to compensate me reasonably"?

A. That is correct.

Q. And the final paragraph:

"Out of this compensation I hereby agree to pay to Alex E. Wilson, the sum of \$25,000, and to Redge Kuhen the sum of \$10,000"?

A. That is correct.

Q. (By the Court): Who directed that that language be put in the letter?

A. I did myself. [90]

Q. (By Mr. Olson): You had an arrangement with N. N. Sugarman whereby you would be compensated for your efforts, is that correct?

A. I had no arrangement with N. N. Sugarman, my arrangement with N. N. Sugarman and Mr. Margolis, we were joint adventurers in the purchase of the Coastal Plywood Company provided I per-

(Testimony of William Steinberg.)

formed certain accomplishments, which I did, and I was to participate to the extent of 25 per cent of the interest, and Mr. Margolis was to get 25 per cent of the interest, and Sugarman was to get 50 per cent of the interest.

This was all verbal, and between the time I gave him the letter, I gave the letter to Mr. Stevenot, and the time I wrote this letter to Mr. Wilson, our arrangement was that if the thing was ever consummated, if the deal ever consummated, I would do all I promised to do, I was to receive 25 per cent, out of which I told Alec I would take care of his expenses to the tune of \$25,000 and Mr. Kuhen his expenses to the tune of \$10,000.

Q. This 25 per cent interest that you speak of as being yours, that was compensation for your services?

A. No, that was my interest. I had no compensation coming from that.

Q. This language in the letter that "N. N. Sugarman had agreed to compensate you reasonably", is that language incorrect, then? [91]

A. That language is incorrect.

Q. For what did you obtain your 25 per cent interest?

A. I haven't obtained anything yet.

Q. For what do you claim that 25 per cent interest?

A. Four reasons: One, bringing the transaction to the attention of Sugarman; two, engineering the complete purchase and sale of the Coastal Plywood

(Testimony of William Steinberg.)

Company; three, actually selling the Coastal Plywood Company for them during the thing, and, four, providing the funds so that the money could be put up for the purchase of the Coastal Plywood Company.

Q. Are you speaking of your funds?

A. Not my funds, no, but funds that came from the sales to——

Q. In other words, if I understand you correctly, this 25 per cent interest was for services rendered by you?

A. That is correct.

Q. Now, after you submitted this offer on behalf of N. N. Sugarman Company, N. N. Sugarman Company dropped out of the picture and then you started representing Mr. Jamieson?

A. I never represented Mr. Jamieson, I brought—originally it was the N. N. Sugarman group originally, and following that—I don't know whether you remember or not, I wrote you a letter stating that the people who were involved were N. N. Sugarman, a man by the name of Jamieson, a man by the name of Sam Steinberg, no relation to myself, and Margolis, they were to put up \$3,750,000 instead of what it was worth, and when I informed [92] them it would take another half a million dollars to do it, N. N. Sugarman dropped out of the picture, Sam Steinberg dropped out of the picture and Margolis dropped out of the picture, and that left Jamieson remaining.

Jamieson happened to be a lumber person, one who understood the particular situation. So I picked

(Testimony of William Steinberg.)

up Jamieson with these people left off, and then we went ahead and tried to develop the situation until they put in a proposal to the trustee, which was wholly unacceptable, and when that proposal was wholly unacceptable, then I brought back N. N. Sugarman and Margolis into the picture, and through the Sugarman Lumber Company finally consummated the transaction.

Q. Going back a second, Mr. Steinberg, you say you did not represent Mr. Jamieson?

A. No, sir.

Q. Weren't you attempting to develop an offer on his behalf?

A. We did develop an offer. I was with Jamieson on the same basis, on a joint venture basis.

Q. Mr. Jamieson wanted to buy the assets of Coastal? A. That is correct.

Q. And you were attempting to develop a plan under which he could buy those assets?

A. That is correct. They wouldn't accept—I mean Jamieson and his group wouldn't follow through, so they——

Q. During what period did you act on behalf of Mr. Jamieson? [93]

A. I acted from I would say August the 15th, 1953 or maybe the end of August, 1953 to about the first week of October of 1953.

Q. And during that same period from the end of August to October, 1953 you negotiated various contracts with a Mr. Fred Holm, of the Hollow Tree Lumber Company and others for resale of

(Testimony of William Steinberg.)

various timber and other properties of the debtor, didn't you? A. No, sir.

Q. What was your answer? A. No, sir.

Q. Did you negotiate such contracts?

A. No, sir, just with Mr. Fred Holm on a portion of the property only.

Q. Just with Mr. Holm. When did you negotiate a contract with Mr. Fred Holm?

A. To the best of my recollection, in the middle of August.

Q. When did you first meet Mr. Holm?

A. I met Mr. Holm I would say in July, at the end of July. If I had my file here I could look through it and I could tell you more accurately.

The Court: Well, is your file in the room?

A. Yes, sir.

The Court: Well, step down and get it.

(The witness leaves the witness stand and procures his file and returns to the witness stand.) [94]

A. Yes, sir, this is it.

Q. (By the Court): Now, will you speak to the microphone, please?

A. Yes, sir, that is the letter.

Q. (By Mr. Olson): My previous question was, when did you first meet Mr. Holm?

A. To the best of my recollection, that would be the early part of August.

Q. Early part of August of 1953?

A. Yes, sir.

Q. Did Mr. Fred Holm ever enter a contract

(Testimony of William Steinberg.)

with you to purchase certain properties then owned by Coastal Plywood and Timber Company?

A. Yes, sir.

Q. Exactly what properties did he agree to purchase?

A. He only agreed to purchase Unit No. 2.

Q. Unit 2? A. Yes.

Q. That is a timber tract owned by the debtor?

A. That is all.

Q. That is only about one-sixth of the total property owned by the debtor, is it not?

A. That is all, very, very small part.

Q. Now, have you checked your file to find out the exact date on which you entered into this contract with Mr. Holm? [95] A. Yes.

Q. What was that date? A. August 25.

Q. August 25th?

A. August 25, 1953, I believe.

Q. You had been trying to sell this timber to the Union Lumber Company——

A. That is correct.

Q. ——prior to that date, hadn't you?

A. Prior—that was during the month of July.

Q. I believe you testified at the last meeting that your negotiations with the Union Lumber Company were also in August of 1953?

A. Yes, sir, that is right, the first part of August, that is correct. It was either at the end of July, Mr. Olson, or the first week in August, to the best of my recollection.

(Testimony of William Steinberg.)

Q. Did your negotiations with the Union Lumber Company collapse? A. Yes, sir.

Q. And it was after that that you commenced negotiations with Mr. Fred Holm?

A. After they collapsed I talked to Mr. Wilson about the situation and I told him at that time that unless the—some of the investment which might be put up were protected, that if he had any other sales that would be available, why, at least a portion of the sales, why, we would be able to proceed [96] further on the venture.

Q. Exactly when was that?

A. That was—I think the first or second week in August. I haven't my telephone record, otherwise I could tell you the exact date it was.

Q. Now, when you entered into this agreement with Mr. Fred Holm on August 25, 1953, you were acting on behalf of Mr. Jamieson, were you not?

A. At that time?

Q. Yes.

A. No, it wasn't at that time, no, sir, it wasn't until after that.

Q. If I understand you correctly, you represented Mr. Jamieson from the end of August until some time in October, 1953?

A. It was after the end of August until some time in October of 1953, that is correct.

Q. Now, Mr. Fred Holm originally was going to pay \$9.00 per 1000 board feet of this timber in Unit 2, was he not?

A. Not at the time I was negotiating with him,

(Testimony of William Steinberg.)

it wasn't until months afterwards that I found out he wrote a letter to the trustee. It was prior to that time that he offered \$9.00 to the trustee per thousand.

Q. Did Mr. Fred Holm ever offer you to pay \$9.00 per thousand board feet for this timber?

A. Not to me personally, no sir. [97]

Q. How much did he agree in the agreement to pay for this timber in Unit 2?

A. He agreed—the price was \$8.50 per thousand.

Q. Sugarman Lumber Company was going to get \$8.00 per thousand for that timber, weren't they?

A. Yes. The reason for that was for services rendered, and the services rendered was what Mr. Fred Holm performed for and on behalf of Mr. Sugarman. The price was \$9.00, yes sir.

Q. That extra 50 cents per thousand, was that going to be received by you? A. No, sir.

Q. —for compensation for your services?

A. No, sir, there was no agreement on services of any kind, form, shape or nature from anybody, Fred Holm, Alex Wilson or Jamieson, or anybody, except through my interest with the Sugarman group.

Q. The Sugarman Lumber Company was only going to receive \$8.00 per thousand for that timber in Unit 2? A. That is correct.

Q. And Fred Holm was going to pay \$8.50?

A. That is correct, originally, yes, sir.

Q. Now you said, I believe, that you did not

(Testimony of William Steinberg.)

negotiate contracts with the Hollow Tree Lumber Company or Mr. Mores and Mr. Smith in that company?

A. Not at that time. It was after October 18th when all our [98] contracts were negotiated.

Q. Did you negotiate those contracts?

A. Yes, Mr. Holm got the contacts, Mr. Holm got Bill Mores and Bill Smith and Laird and Laitre and he brought them to my office and from there I negotiated all the contracts, yes, sir.

Q. These people were all brought into the picture by Mr. Fred Holm? A. That is correct.

Q. Who were you representing or acting on behalf of at that time? A. The Sugarman group.

Q. Who negotiated and prepared the contracts with Hollow Tree Lumber Company, Mores, Smith and these other people?

A. The final contracts were negotiated by a man by the name of Dicker of Los Angeles.

Q. Whom did Mr. Dicker represent?

A. Mr. Dicker represented the Sugarman Company, Nate Sugarman, Margolis and myself.

Q. Did Mr. Dicker also negotiate the final contract with Mr. Fred Holm? A. Yes, sir.

Q. This contract that you had previously negotiated in your name with Mr. Fred Holm, that expired, did it not?

A. Yes, sir. All the contracts that were made in my name were made in a brief and informal manner. The basic plan [99] was on there. When the formal contracts were drawn up they just took

(Testimony of William Steinberg.)

the basic plan that was there and put it in the final contracts. The terms, conditions, sales price and everything else was the same. Dicker just made the final contracts.

Q. Now, if I understand you correctly, Mr. Steinberg, Mr. Wilson's contract with your proposal, then, was limited to calling the debtor to your attention in June, 1953, and introducing Mr. Fred Holm to you some time in the latter part of August, 1953, is that correct?

A. Not the latter part of July, the first week in August.

Q. The latter part of July?

A. And bringing the necessary information, that is correct.

Q. And for this you agreed to pay him \$25,000?

A. What I agreed to pay him was \$25,000 for expenses, whatever he had involved in the expenses, yes, sir, and \$10,000 to Mr. Kuhen, that is correct.

Q. Did Mr. Wilson show you a statement of expenses which showed that he had spent \$25,000?

A. No, he didn't spend \$25,000, he told me he spent in excess of \$8,000, which I could well believe, knowing what he did and who was under the picture, and I knew other expenses were involved, and I said, "Would \$25,000 cover it?" And that was it.

Q. Do you know what expenses he incurred in bringing to your attention Coastal Plywood and Timber Company, and in introducing Mr. Holm to you? [100]

A. No, sir, I do not.

(Testimony of William Steinberg.)

Q. Were those steps taken in San Francisco?

A. Yes, sir.

Q. He introduced Mr. Holm to you in San Francisco?

A. Well, over the telephone in San Francisco, yes, sir.

Q. And he first spoke to you in San Francisco, is that correct? A. Yes, sir.

Q. Mr. Wilson at his office in San Francisco?

A. Correct.

Q. Now, when did N. N. Sugarman come back into the picture?

A. October—if you wait just a moment I will give you the exact date. (Referring to papers.)

The 16th of October.

Q. October 16? A. Yes, sir.

Q. Now, at that time Mr. Steinberg, Mr. Sugarman and his associates started negotiating directly with the trustee, and with Mr. Carr and myself, did they not?

A. No, sir, they did not, not until months afterwards—weeks afterwards.

Q. What date did they start negotiating directly with the trustee?

A. I believe I brought them in at least between two and three weeks afterwards, after October 18.

Q. Do you know that these gentlemen, Mr. Sugarman and his associates, did not negotiate with the trustee commencing October 16, 1953?

A. Definitely.

Q. How do you know that?

(Testimony of William Steinberg.)

A. Because——

Q. Isn't it a fact, Mr. Steinberg,——

A. Let me just answer the question, I will tell you.

On October 16th I talked to Mr. Sugarman over the telephone and I told him what the status of the whole situation was with regard to Coastal, and at that time he suggested that I get hold of Barney Margolis and meet with him and discuss the problem with him, which I did on October 18th.

We then got hold of Nate Sugarman and Nate Sugarman came to San Francisco on the 18th and we met at the Fairmont Hotel—on the 19th, rather, we met on the 19th, and we outlined the whole plan on the 19th, and Mr. Sugarman went back to Los Angeles.

At that time I submitted to him the basic plan which was ultimately adopted to Mr. Sugarman and Mr. Margolis and set up the entire plan of purchase, payment on the purchase and how it should be paid and where the funds were coming from.

I believe that Mr. Dicker—no, I believe Mr. Sugarman—in fact that night—I think he came back on Wednesday—he came back on the 21st, I believe, and at that time Mr. Dicker [102] came up for the first time. He met Mr. Sugarman, we introduced Mr. Dicker to Mr. Sugarman and we employed Mr. Dicker at that time to formalize the contract and formalize the plan and go into detail of how to consummate the transaction.

(Testimony of William Steinberg.)

Q. You know, do you not, Mr. Steinberg, that the trustee and Mr. Carr and myself negotiated directly with Mr. Sugarman, Mr. Dicker and Mr. Margolis for a period of approximately six weeks?

A. That is correct.

Q. You know we had expensive negotiations with regard to the security for the balance of the purchase price, do you not?

A. That is correct.

Q. Mr. Steinberg, isn't it a fact that Mr. Sugarman, Mr. Dicker and Mr. Margolis told you that you had no authority to represent them some time in October of 1953?

A. No, sir, they said that in December of 1953 after the deal was all consummated, or at least the plan was all consummated, all the monies and all the funds were turned over to them, and at that time they said that I wasn't to represent them—I never represented them at any event, as far as the lawyers are concerned, I was a joint adventurer with them on this whole situation.

Q. Do you know when Sugarman Lumber Company submitted its offer to the trustee to purchase the assets of the debtor?

A. Yes, sir, I can tell you, I can give you the exact date. [103] It was in December—they submitted the offer after I came down and got them \$50,000 so they could put up the fifty thousand.

Q. Was it December 12, 1953?

A. That is correct. The money was turned over to them on December 10 and on December 12 they put up the money and put up the offer.

(Testimony of William Steinberg.)

Q. Following approximately 6 weeks' negotiations with the trustee?

A. That is correct, on a plan that was submitted—basically the plan that was submitted to your office weeks before the Sugarmans came in.

Q. Now, this contract that you had negotiated with Mr. Fred Holm, that was actually executed and was between Mr. Holm as one party and you as the other, is that correct?

A. That is correct. It wasn't a contract that was executed, it was an offer that was made.

Q. It was an offer?

A. Yes, sir. Just one moment. The formal contract was executed on February 4th of this year.

Q. Of '54? A. That is correct.

Q. This contract provided for the purchase of certain timber by Mr. Holm?

A. That is correct.

Q. Unit 2, as you have described it, is that correct? [104]

A. A portion of Unit 2, yes, sir.

Q. And it provides for payment, does it not, for the timber only as it is removed from the property?

A. That is correct.

Q. Over a long period of years?

A. Many years, yes, sir.

Q. And the same is true of these other contracts with the Hollow Tree Lumber Company and the others?

A. That is correct, they are long term contracts, yes, sir.

(Testimony of William Steinberg.)

Q. When did you first meet Mr. William Mores?

A. I met—if you will wait a moment I will tell you the exact date. (Referring to papers.)

October 27th.

Q. October 27th?

A. It is either the 25th, 26th or 27th, not later than the 27th, and I think it was the 25th.

Q. And at that time you told Mr. Mores that you were putting together an offer to buy the debtor's assets, is that correct?

A. No, sir, I did not.

Q. Did Mr. Mores know that you were putting together an offer? A. No, sir.

Q. Did you tell Mr. Mores that you were acting on behalf of Mr. Jamieson in developing a plan of reorganization?

A. No, that was after Jamieson dropped out of the picture that Mores and Smith came in on the picture. Mores and Smith [105] always knew at all times that it was the Sugarman group who were to purchase the assets of Coastal Plywood.

Q. Do you know, Mr. Steinberg, that all of the original arrangements with Mr. Holm, Hollow Tree Lumber Company, Mr. Mores, Mr. Smith and the others were renegotiated after you dropped out of the picture?

A. No, they were never renegotiated after I dropped out of the picture. They might have modified the contract after the first of the year. When the original contract was signed at the time the offer was made, the basic propositions, all of the

(Testimony of William Steinberg.)

contracts I drew up were right there with no differences whatsoever except as to form.

Q. Those contracts——

A. I beg your pardon?

Q. Excuse me, go ahead.

A. As to form only. The purchase price, the sales price, everything was exactly identically the same as when the original contracts were negotiated, except it was put into form, and what happened after the first of the year I don't know. There might have been some modifications.

Q. After the first of 1954?

A. That is correct, but at the time the offer was made it was identical.

Q. Do you know when the sale to the Sugarman Lumber Company was closed? [106]

A. The sale from whom?

Q. From the trustee of Coastal Plywood & Timber Company to Sugarman Lumber Company?

A. Well, I believe it was a couple of months ago, three months ago at the most.

Q. In April of this year, was it not?

A. Yes, sir.

Q. You don't know what happened to those contracts after the first of the year?

A. Well, to be more specific, what happened to the contracts after the confirmation of the sale in April, no I don't, no.

Q. (By the Court): He wants to know what happened after the first of the year.

A. Oh, I don't believe—just reminding me, I

(Testimony of William Steinberg.)

don't believe they were modified, if they were at all modified, until after April of this year.

Q. (By Mr. Olson): Did you know that the contracts in effect at the first of the year expired by their own terms on March 12th of this year?

A. Yes, now as you remind me of the whole thing, yes, sir, and they extended the time within which to execute the contracts, and furthermore—with the exception of Mr. Holm—and furthermore I do believe now that they did change the contracts from a tax standpoint—with the same terms were there, as far as I remember correctly—— [107]

Q. Just a moment, Mr. Steinberg, you didn't participate in negotiating those changes, did you?

A. No, sir, I did not.

Q. Did you ever see those final contracts?

A. No, sir.

Q. So you don't know what is in those final contracts, do you? A. No, sir, I don't.

Q. Do you know who owned Sugarman Lumber Company when the trustee's plan of reorganization was confirmed and consummated in April of this year?

A. Well, so far as I know, and I checked the records, there were no shares of stock issued whatsoever. They only had a holding agreement between the four people.

Q. What record are you speaking of, Mr. Steinberg?

A. The corporation, the Department of Corporations' records as of today—I mean as of the last

(Testimony of William Steinberg.)

time I talked, which was last week, Sugarman Company had no stock issued whatsoever. They had a holding agreement between four people—five people: Sam Rudolph has a third interest in the company, Abe Sugarman has one-sixth interest in the company, Nate Sugarman has one-sixth interest in the company, Nate Dicker has one-sixth interest in the company, and Margolis has one-sixth interest in the company. The assets which the Sugarman Company own at the present time, as I understand they changed their name to [108] S. G. Rudolph Company——

Q. Did you ever represent Mr. Rudolph or act on his behalf? A. No, sir, never.

Q. Now, Mr. Steinberg, you were one of the leaders in April of this year of an attempt to set aside the trustee's second plan of reorganization, were you not?

A. No, sir, I was not a leader.

Q. Didn't you endeavor to present a proposal and get the Sugarman plan defeated?

A. I did, I endeavored to present a proposal, yes, sir.

Q. Weren't you the person who prepared the proposal that was brought into Judge Murphy at the hearing in April of this year?

A. Prepared the proposal?

Q. Yes. A. Yes, sir, I did.

Q. And that was presented by Mr. Brooks Berlin? A. That is correct.

(Testimony of William Steinberg.)

Q. You intend to file a suit against Sugarman Lumber Company, do you not, Mr. Steinberg?

A. That I don't know. I haven't determined what my course of action will be.

Q. You have so stated to both the trustee and myself, have you not?

A. That is correct, and also to Mr.——

Mr. Olson: I believe I have no further questions, your Honor. [109]

The Court: Do you have any questions?

Mr. Hildebrand: Yes, a few.

The Court: All right, Mr. Hildebrand.

Redirect Examination

Q. (By Mr. Hildebrand): Now, to get the situation clear, at the present time the Sugarman or Dicker or Margolis or any of these people, Rudolph or any you have mentioned, have repudiated any deal that was ever made with you, is that right?

A. A hundred per cent, yes.

Q. And so far as this arrangement, this letter that you gave to Alex Wilson was concerned, about \$25,000, that was not to cover any brokerage fee, was it?

A. No, sir, it was not. My understanding explicitly when Mr. Wilson came in the deal he was to be protected on the brokerage fee.

Q. And do you know what the usual brokerage fee is in a percentage way for timber deals?

A. I am not familiar, no, I do not.

(Testimony of William Steinberg.)

Mr. Dudley: I wish to object, Mr. Steinberg has not been qualified as an expert witness——

The Court: He said he doesn't know.

Mr. Hildebrand: Well, we will prove by other witnesses what that is, your Honor, that it is 5 per cent.

Q. But you are not familiar with that, not being a brokerage man yourself? [110]

A. No, sir, I am not.

Q. So far as you are concerned then, this conversation that you had with Alex Wilson in connection with his \$25,000 was that if you got anything out of the deal as a joint venturer with these other boys, that you felt he had done so much work you wanted to see he got that much, is that the idea?

A. Yes, sir.

Q. Now, was he the man that exclusively beyond anyone else contacted you with Mr. Holm?

A. That is correct. That is the way I knew Mr. Holm.

Q. And then was Mr. Holm the man who made all the rest of the contacts?

A. Yes, sir, he did all the extra work with everybody, he was the timber expert in this situation.

Q. So so far as the matter stands today then, so far as you know, nobody wants to pay anything to anybody for putting the deal over, is that right?

A. That is correct.

Q. The Sugarmans have repudiated you?

A. Exactly.

(Testimony of William Steinberg.)

Q. They don't want to pay you anything at all for what you have done? A. No, sir.

Q. And they don't want to pay Mr. Wilson anything? [111] A. No, sir.

Q. And the trustee doesn't want to pay Mr. Wilson anything?

A. No, sir, the trustee told me that.

Q. So they want to get the benefit of the deal that has been put over for the sale of this timber to Mr. Holm and his associates——

A. Exactly.

Q. ——and pay nobody anything, is that it?

A. Yes, sir.

Mr. Olson: Just a moment, your Honor, I object to that as argumentative.

The Court: That question is argumentative. The answer will be stricken.

Mr. Hildebrand: Yes.

Q. And so far as you are concerned, you never undertook—did you ever undertake or discuss with the Sugarmans the payment of any commission to Mr. Wilson?

A. No, I never have. They always repudiated Mr. Wilson under any circumstances, and then——

Q. And so far as they as the buyers are concerned, did they ever agree to pay any commission to anybody for the purchase of this?

A. No, sir, not that I know of, no, sir.

Q. The only agreement that you had with them was not in the nature of commission, was it, is that correct? [112]

(Testimony of William Steinberg.)

Q. It is simply that you claim that you were a joint venturer? A. That is correct.

Q. And on that you have no written agreement?

A. No, sir.

Q. And whether or not you will file suit or prevail in the suit depends, I take it, on whether or not a case can be made out under the circumstances to support your joint venture?

A. That is correct.

Q. But at the moment you have no money from this joint venture? A. No, sir.

Q. You are in no position to pay any funds of any kind to Mr. Wilson for anything he may have done in the matter?

A. Or to anybody else, that is correct.

Q. And so far as you are concerned, in the connection that you had with the matter, if it hadn't been that Mr. Wilson contacted you and gave you the data so that you could see Mr. Holm, could you have put the deal over?

A. If it weren't for Mr. Holm the deal could never have been made. He actually made the deal a hundred per cent, and they even repudiated Mr. Holm, the Sugarmans did, but he made the deal, for us all, and Mr. Wilson got Mr. Holm for us, and if the stockholders got anything out of it they owe it all to Mr. Holm, and if the trustee gets anything out of it they owe it to Mr. Holm.

Q. And Mr. Wilson was the man who got Mr. Holm? [113] A. That is right.

Q. So that so far as this case is concerned and

(Testimony of William Steinberg.)

what you know about it and what has been done, the deals that were made both for the sale of the timber and the resale of the timber were initiated through Mr. Wilson and through the contact with Mr. Holm, is that right? A. Yes, sir.

Mr. Dudley: I object to that as leading and suggestive. All of these questions, every question that has been asked recently has been leading and suggestive all the way through. The answer was supplied by the attorney before the witness had a chance to answer.

Mr. Hildebrand: Well, it is more or less in the nature of summary, your Honor, but I will reframe the question. Let me put it this way:

Q. In your connection with these transactions did anybody other than Mr. Wilson have anything to do with getting you in touch with Mr. Holm?

A. No, sir.

Q. And then so far as the substantial part of the deal was concerned, the main portion of the sales, who helped you in getting those lined up?

Mr. Dudley: I object to that, your Honor, that calls for a conclusion as to what is meant by "a substantial portion of the deal." [114]

The Court: I will overrule the objection.

The Witness: What was that question, please?

Q. (By Mr. Hildebrand): Who helped you to get the major portion of the contacts for the sale of the timber?

A. Well, Mr. Holm—after Mr. Wilson brought Mr. Holm to my office, Mr. Holm did all the work

(Testimony of William Steinberg.)

and he got the people together, and between his work and my work and everything else for everybody to make the contracts fair and equitable, why, that is what accomplished the sale.

Q. Who were those people specifically, and what amounts of timber did they take?

A. Well, Mr. Holm—the whole timber was sold, the whole 500,000,000 feet was sold out. Mr. Holm took Unit No. 2.

Q. How much was that?

A. 152,000,000 feet, and the Hollow Tree Lumber Company took 150,000,000 feet.

Q. That was through Mr. Holm?

A. Oh, Mr. Holm engineered it, he did it all. And Mr. Laird and Laitre—Laird and Laitre and Smith and Mores together, under a corporation named the California Plywood Company, I believe, they took 220,000,000 feet, and that took up the entire of all the timber that was there. Mores and Smith and Laird and Laitre also bought the mill and bought the mill equipment, which Mr. Holm engineered.

Q. All right, then. Now, aside from—— [115]

The Court: Is that Holm or Holmes?

A. Holm, H-o-l-m, your Honor.

Q. (By Mr. Hildebrand): Aside from Mr. Holm, Mr. Wilson and yourself, was there anybody else in this picture at all?

A. Nobody whatever.

Q. Did anybody else help to sell any timber and help this trustee to get this deal over besides——

A. Nobody that I know of.

(Testimony of William Steinberg.)

Q. No broker or anyone put the deal over?

A. No, sir, outside the trustee and the attorneys for the trustee.

Q. And when the Sugarman, and whatever name they finally wound up with, or with whatever corporation they finally wound up, did they put the deal through with the assistance of anybody other than yourself——

A. No, sir——

Q. ——from their end of it?

A. No, sir—well, I will take that back. Mr. Rudolph came in the picture—I believe he was an interloper afterwards—he is a brother-in-law of Mr. Sugarman, which he testified in court, and he came in the picture and he increased the basic price by the sum of \$100,000, which the Sugarman ultimately met to put the deal over, and then I believe Mr. Rudolph did advance certain sums of money to the Bank, for which he took security on the rolling stock. [116]

Q. Was that after you had called the deal to the attention of the Sugarman?

A. Oh, that was the final consummation of the deal, after all the sales were made and deposits were put up.

Q. So if anybody is to be paid any commission for putting the deal together in this matter——

Mr. Dudley: Just a moment, if your Honor please——

The Court: Well, let him ask the question.

Q. (By Mr. Hildebrand): Are there any people you can call to the attention of the court other than

(Testimony of William Steinberg.)

the ones we have mentioned who did a bit of work in this connection?

A. No, sir, not that I know of.

Q. On either side? A. No, sir.

The Court: Just a moment, I want to be sure; you were going to object. Did you intend to object to that question?

Mr. Dudley: No, your Honor.

The Court: All right.

Q. (By Mr. Hildebrand): Now, on the final end of it, and then I think that is all I want to ask, so far as the Sugarmans are concerned, after the proposal was made that they should buy, did they insist that you get the lumber resold before they would buy it?

A. Definitely. In other words, before the offer was made the condition precedent was that everything be sold out in [117] advance and everything be tied up and all the deposits be put up and all the contract forms signed, and that is exactly what was done.

Q. So did the Sugarmans have to put up a dime on the deal?

A. Well, the Sugarmans didn't put up any money whatsoever as such, but it is my understanding that subsequently, however, in April of this year, I believe, that Sam Rudolph made a loan of certain sums of money to take care of certain obligations again, which he got the security of the rolling stock.

Q. After the property had been resold?

(Testimony of William Steinberg.)

A. That is correct.

Q. And the lumber was resold for how much more than the original sale?

A. Well, if the contracts were as we originally entered into them without any modifications, the total purchase price, I believe, was \$4,550,000, and I believe the gross total sales price of everything was, I believe, \$7,000,000.

However, there is an interest factor that has to be deducted from the gross price of about \$600,000, so they had a potential of about \$2,000,000 profit, the Sugarmans did.

Mr. Dudley: If your Honor please, I would like to inquire into the relevancy of this so far as the question before us.

The Court: I don't know that that is particularly relevant, Mr. Hildebrand. It all occurred subsequent. [118]

Mr. Hildebrand: Well, the only purpose is this, your Honor, that in order to put the deal over, the contacts——

The Court: That phase of it is germane, what the income was——

Mr. Hildebrand: Oh, yes.

The Court: ——what was made after this by way of profit is immaterial.

Mr. Hildebrand: In other words, to close up the deal, and I think this is the final question on the matter, to close up the deal and to make the deal it was necessary not only initially to sell the lumber but then to resell it?

(Testimony of William Steinberg.)

A. That is correct.

Q. And in connection with the resale was it Mr. Holm and his associates who put over the resale?

A. That is correct.

Mr. Dudley: That is leading and suggestive, your Honor, and I would like to object to it.

Mr. Hildebrand: I don't think there is any question about it. Is there any argument about it?

Mr. Dudley: I don't know, but you might let the witness answer.

Mr. Hildebrand: All right.

A. Well, the resale was made first to Mr. Holm and Mr. Holm got Smith and Mores and Laird and Laitre, and the entire thing was sold out through the efforts of Mr. Holm, and ultimately [119] I came into the picture and took the contracts and worked them out, put the terms down which I knew were acceptable.

Mr. Hildebrand: I think that is all.

The Court: Any further cross-examination?

Recross Examination

Q. (By Mr. Olson): Just a few questions, your Honor. If I understand correctly, Mr. Steinberg, you left the Sugarman group about the first of the year and had no part in any further negotiations on behalf or for Sugarman Lumber Company, is that correct?

A. With the ultimate purchasers?

Q. The ultimate purchasers?

A. Yes, I had contact with the ultimate purchas-

(Testimony of William Steinberg.)

ers, but I wasn't acting in any representative capacity or even in an ownership capacity.

Q. You had no part in negotiating any changes in these resale contracts after the first of the year?

A. No, sir, except on Mr. Holm's contract which was made on February 4th.

Q. And all of these so-called resales are resales over a long period of years with payments only as timber is removed?

A. That is correct, over a period of 10 years.

Mr. Olson: I have no further questions, your Honor.

The Court: All right then, step down, please.

Mr. Dudley: If your Honor please, this witness will still [120] be available at a later date.

The Court: What is the situation? When you say a later date, today?

Mr. Dudley: Today, I mean.

The Court: Well, Mr. Steinberg, is it going to be necessary to call him as a further witness?

Mr. Dudley: I am not sure at the present time, but I feel it may be when further witnesses are called. I understand Mr. Holm is here in court and is going to testify, and I may very well like to ask Mr. Steinberg some questions that Mr. Holm is going to testify about.

Mr. McMurchie: Now is the proper time to ask the questions, your Honor.

The Witness: I would like to get back to San Francisco if I can.

The Court: Well, it seems to me if there are

any further questions to ask you ought to ask them now.

Mr. Dudley: Well, I am not able to now, your Honor. I am just anticipating them.

The Court: I don't know what the situation is going to be. I am not going to require Mr. Steinberg to remain around if that is the situation.

As a matter of fact, I am inclined to think that the whole discussion—I don't know how germane it is going to be, but it may go to some part of this action, but what relationship [121] it has to do with this witness I don't know. At any event it is simply up to you, gentlemen. I am not going to hold the witness here.

You had Mr. Wilson on the stand. Do you want to conclude with his testimony?

Mr. McMurchie: If the Court please, Mr. Holm is also here and would like to get back to San Francisco, if I could have permission to call him out of order.

The Court: All right, call Mr. Holm.

FRED HOLM

called for the Petitioner, sworn.

Direct Examination

Q. (By Mr. McMurchie): Your name is Fred Holm, is that correct? A. Yes.

Q. And will you state your address, Mr. Holm?

A. Gualala, California.

Q. And your occupation?

(Testimony of Fred Holm.)

A. Sawmill operator.

Q. You own a sawmill, is that correct, Mr. Holm? A. I do.

Q. Do you know Mr. Alex Wilson, Mr. Holm?

A. I do.

Q. And can you tell me when you first met Mr. Wilson? A. In May of 1953. [122]

Q. Can you tell me how you first met Mr. Wilson?

A. Mr. Wilson contacted me regarding the sale of some timber adjacent to my mill.

Q. And that was in May of 1953? A. 1953.

Q. And did he discuss that timber with you at that time? A. He did.

Q. And did you conclude that you would purchase that timber? A. I did.

Q. And did you write to Mr. Wilson in that regard? I will show you a letter dated May 27, 1953 on the letterhead of Holm-Solbeck Lumber Company, and ask you if you have seen that letter before? A. Yes; I wrote this letter.

Q. That is your signature, Mr. Holm?

A. It is.

Q. This letter was sent to Mr. Wilson, is that correct? A. It was.

Mr. McMurchie: If the court please, I will introduce this as Plaintiff's Exhibit next in order.

The Court: All right, Petitioner's Exhibit 6.

(The letter referred to was marked Petitioner's Exhibit 6.)

(Testimony of Fred Holm.)

Mr. McMurchie: The letter is dated May 27, 1953, addressed to Mr. Alex Wilson.

"Dear Mr. Wilson: [123]

"I understand you have a pending deal whereby we might acquire a part of the Coastal Timber tract. We are interested in that portion sloping toward the ocean, the timber is located 3 miles from our mill and is a down grade haul. According to the maps it looks like about 16,000,000 feet. Our mile is south and west of the timber, in Gualala.

"My ideas are \$9 with the land and \$8 without. I will buy a larger amount and put in another mill if your principals so desire.

"Very truly yours,

"Fred Holm."

Q. Subsequent to that time, Mr. Holm, subsequent to this letter, were you contacted again by Mr. Wilson? A. By telephone, yes, sir.

Q. Do you recall approximately when that telephone conversation was?

A. Both prior and after the letter.

Q. I see. In other words, you talked with him at various times? A. I did.

Q. And do you know Mr. William Steinberg who has testified here? A. I do.

Q. Will you tell us how you first met Mr. Steinberg?

A. Mr. Wilson called me in connection with the sale of the [124] Coastal Plywood. I called at his office in San Francisco. He referred me to Mr. Steinberg.

(Testimony of Fred Holm.)

Q. Did you discuss these Coastal properties with Mr. Wilson before you went to Mr. Steinberg's office? A. I did.

Q. Was that a lengthy discussion or a short discussion? A. Several discussions.

Q. And you then did go to Mr. Steinberg's office? A. I did.

Q. And you went with Mr. Wilson?

A. I did.

Q. Had you ever met Mr. Steinberg prior to that time? A. I had not.

Q. Do you recall your conversation with Mr. Steinberg at that time in his office?

A. He mentioned the fact that Mr. Wilson had offered him the Coastal Plywood properties and that if I could make a sale of the various units—in our language, so as to cash them out—he could finance the transaction through his connections.

Q. Did he tell you who his connections were?

A. Mr. Nate Sugarman.

Q. Were you able to cash out this transaction, as you say? A. Yes.

Q. How were you able to do that?

A. Through my friends and people in the saw-mill business [125] adjacent to the Coastal properties.

Q. Can you give me their names?

A. Mr.—the Hollow Tree Lumber Company, owned by Mores and Smith, purchased 135,000,000 feet, or Unit No. 1.

The Mullala Forest Products Company, which is

(Testimony of Fred Holm.)

owned by Mr. Laird and Mr. Laitre, purchased 220,000,000 feet. This 220,000,000 feet was purchased by a corporation formed by Mores, Smith, Laird and Laitre, and this group also purchased the mill, the log deck, part of the equipment, the lumber inventory, and so forth.

Q. Can you tell me what the approximate amount of cash out for the resales was?

A. \$7,000,000.

Q. About \$7,000,000 on the resale. Now, who were these contracts made with, who represented the Sugarman Lumber Company?

A. The original contracts were drawn up by myself in conjunction with Mr. Steinberg and Mr. Wilson.

Q. Mr. Wilson worked with you at all times?

A. Yes, sir.

Q. Worked with you during these negotiations for the resale?

A. We discussed the various phases for the sale.

Q. Now, were these contracts with Mr. Steinberg assigned to Sugarman Lumber Company or were more formal contracts eventually executed between yourself and the Sugarman Lumber Company? [126]

A. Final contracts were executed with the original people that I brought into the picture along about the same lines.

Q. Essentially the same lines as the original agreement?

(Testimony of Fred Holm.)

A. Yes. The final consummation was the initial sale.

Q. Essentially the same thing? A. Yes.

Q. Mr. Holm, was a commission ever paid by you to anyone for negotiating these resales?

A. Well, I understood that Mr. Wilson was getting a commission, and my expenses incurred in this transaction plus part of the commission were to be paid to me.

Q. Did you have an understanding as to where Mr. Wilson was looking for his commission?

A. I understood it was coming from the trustee of the Coastal Plywood Corporation.

Mr. Olson: I move to strike that, your Honor, on the ground it calls for a conclusion, an understanding, no basis shown for the understanding.

The Court: Sustained. The motion to strike will be granted.

Q. (By Mr. McMurchie): Mr. Holm, did you ever pay a commission for the negotiating of the resales of the assets of Coastal? A. No.

Q. No commission paid by you to Mr. Wilson?

A. No.

Q. Any commission paid by Hollow Tree Lumber Company to Mr. Wilson? A. No.

Q. Or any other purchaser on the cash out to Mr. Wilson? A. No, sir.

Q. So to your knowledge Mr. Wilson has received nothing for his efforts in this transaction?

A. As far as I know he has not. If he did I didn't share in it.

(Testimony of Fred Holm.)

Q. Have you bought and sold various pieces of timber, Mr. Holm?

A. In connection with my own operations I have, yes.

Q. Can you tell me what the usual brokerage commission is on the sale of timber?

A. 5 per cent.

Q. Can you tell me who pays that commission?

A. The owners.

The Court: You mean the seller?

A. The seller.

Q. (By Mr. McMurchie): Mr. Holm, can you tell me—I think you testified that you purchased from the Sugarman Lumber Company the tract known as Unit No. 2, is that correct?

A. I did.

Q. Can you tell me the approximate number of feet, board [128] feet? A. 152,000,000.

Q. 152,000,000.

A. Yes. 135,000,000 in Unit No. 1, 220,000,000 in Units 3 and 4.

Q. And no commission was paid by you on that purchase? A. No.

Mr. McMurchie: I think that is all.

The Court: All right. How much time will it take you to cross examine this witness?

Mr. Olson: I have several questions, your Honor, but I think, however, it will not take more than 10 minutes.

The Court: If we can dispose of this witness before the noon recess it will be more satisfactory.

(Testimony of Fred Holm.)

The Witness: Thank you.

Mr. McMurchie: We appreciate that, your Honor.

The Court: Will you proceed with the questioning then?

Cross Examination

Q. (By Mr. Olson): Mr. Holm, you were prepared to purchase the timber in Unit 2 for \$9 a foot provided you could also get the land, is that correct?

A. Mr. Olson, in that offer of \$9 was included various other properties other than this 152,000,000 covered. It covered some land at Point Arena, some water bearing property and some various oil lands. The timber itself, my offer was really \$8 [129] including the land, Mr. Olson.

Q. Can you give me the date on which you first met Mr. Steinberg, the approximate date?

A. I think I first met Mr. Steinberg in late June, the first time, June or July, Mr. Olson.

The Court: You mean by that in late June or early July?

A. Yes.

The Court: All right, proceed.

Q. (By Mr. Olson): Following that you succeeded in arranging resales of the timber and mill properties then owned by Coastal to Hollow Tree Lumber Company and various individuals, is that correct?

A. I did.

Q. Can you tell me when you first commenced negotiating such resales?

A. Well, there were a number of conferences

(Testimony of Fred Holm.)

with Mr. Wilson and Mr. Steinberg, and I presume it was in early August when I started negotiating with the purchasers.

Q. Early August of 1953? A. Yes.

Q. And you drew the original contracts between Mr. Steinberg and the various purchasers of portions of this property?

A. I did, as to terms and conditions and so forth.

Q. Now, were those contracts between Mr. Steinberg on the one hand and the individual purchasers on the other, namely [130] yourself, Hollow Tree Lumber Company, Mores, Smith and the others you mentioned?

A. I understood—it was my inference he was representing the Sugarman interests.

Q. The contracts were in his name alone as originally executed, is that correct?

A. As originally executed they were in the name of William H. Steinberg, trustee for Sugarman Lumber Company.

Q. And when were these contracts executed?

A. The actual contracts were executed in October.

Q. Of 1953? A. 1953.

Q. And you know that subsequently Sugarman Lumber Company itself negotiated contracts with these various individuals that were actually executed by Sugarman Lumber Company, is that correct? A. That is right.

Q. You were one of the contracting parties with the Sugarman Lumber Company? A. Yes.

(Testimony of Fred Holm.)

Q. And you were the purchaser of one large tract of the timber? A. I was.

Q. And you were still to receive a commission on the resales of the rest of the timber, was that your understanding? [131]

A. No commission other than part of the Wilson commission.

Q. Including a commission on the sale of a portion of the timber to yourself?

A. My commission was based on the fair price that the trustee was to receive for the entire property.

Q. You were to share a commission with Mr. Wilson, is that correct? A. Yes.

Q. What percentage were you to receive?

A. Well, it was more or less understood that the commission was to be divided equally.

Q. Divided equally. Do you still expect to receive that commission? A. Yes.

Q. How much did you pay for Unit 2 of this timber when you bought it from Sugarman Lumber Company?

A. The final price is still pending, Mr. Olson.

Q. Has any agreement at all been reached on the price you are to pay?

A. I am just trying to arrive at an agreement with them now.

Q. I see. But it is a fact, is it not, that you will not pay them a flat cash sum for this timber, but will pay for it as you remove it?

A. That is right, with the down payment. [132]

(Testimony of Fred Holm.)

Q. With the down payment.

The Court: Are you buying the land or the timber?

A. The land and the timber, your Honor.

Q. (By Mr. Olson): Mr. Wilson arranged, negotiated with you at one time, did he not, for the resale of this timber to you at a flat \$9 per thousand including the land?

A. That was a tentative—just a tentative arrangement.

Q. And you knew, did you not, at that time that Sugarman Lumber Company was to receive only \$8 per thousand of that price?

A. No, Sugarman Lumber Company never did know what they were to receive.

Q. Did Mr. Wilson indicate to you that he intended to retain \$1 of that \$9? A. No, sir.

Q. He did not indicate that? A. No, sir.

Q. Isn't it a fact, Mr. Holm,—

A. I could tell you how that \$9 comes about if you are interested in it.

Q. Yes, I would like to hear that.

A. That is the price that I sold the other timber for to my customers, to my purchasers.

Q. Oh, you did not retain this Unit 2 yourself?

A. Yes, but in the subsequent conversations—

The Court: He wants to know what you mean by your purchasers. Do you mean the purchasers who bought the other units? A. That is correct.

Mr. Olson: Do you still own Unit 2?

A. I do.

(Testimony of Fred Holm.)

Q. You do. Mr. Holm, isn't it a fact that the customary commission on the sale of a very large block of timber is well under 5 per cent? Isn't it a fact that normally it goes down to not more than 2 per cent when a large tract of timber is involved?

A. Mr. Olson, in selling a large block of timber there are the usual expenses that do not come under services. It was necessary for me to have a large portion of this recruised and resurveyed and so forth before I could make a sale of the various units.

Q. I don't believe you have answered my question. Do you know of any recent sales in Mendocino County or nearby of very large tracts of timber, in the neighborhood of 500,000,000 board feet?

A. In the State of California, yes, there have been a number of them.

Q. Do you know of any sale of a tract of timber that large or approximately that large which involved a flat 5 per cent commission? [134]

A. I would say that 5 per cent is a fair commission.

The Court: No, he didn't ask you that. He asked you if you knew of any sales of that size, of comparable size, in which 5 per cent commission was paid.

A. If I sold it it would be.

The Court: No, he wants to know if you know of any.

A. I know of a number of timber sales.

Q. Well, do you know what the commission was?

A. 5 per cent.

(Testimony of Fred Holm.)

The Court: And of what size were the sales?

A. The two sales that I am conversant with right now are between two and three hundred million feet.

Q. (By Mr. Olson): Two and three hundred million? A. Yes.

Q. And a commission of 5 per cent has been paid on those?

A. Yes. That is the customary commission.

Q. There have been sales however, have there not, of blocks of timber of two and three hundred million board feet which involved commissions of far less than 5 per cent? A. By negotiation.

Q. Did you ever meet the trustee, Mr. Stevenot?

A. Yes, I met him, had several visits with him, he is a very fine man.

Q. Did you ever mention to him that you were expecting to receive a commission on the Sugarman plan of reorganization? [135]

A. After the negotiations started on the Sugarman transaction I didn't visit with Mr. Stevenot.

Q. You didn't see him?

A. My visits were prior to the start of this sale.

The Court: During any of those times did you ever discuss the possibility of a commission?

A. I never met Mr. Stevenot after I made the sale.

Q. (By the Court): No, before the sale?

A. Before the sale, no.

The Court: You never met him before then either?

(Testimony of Fred Holm.)

A. I met him prior to the sale, yes.

Q. (By the Court): Well, during those times did you ever have any discussions with him about a commission?

A. I did not.

Q. (By Mr. Olson): One final question, Mr. Holm, did you have anything to do with the negotiations of the final contracts between Sugarman Lumber Company and the Hollow Tree Lumber Company, Mr. Mores, Mr. Smith and the other individuals you mentioned?

A. I was in on all the contracts prior to Mr. Rudolph's entrance into the transaction.

Q. And after that you had no part in subsequent negotiations or subsequent changes?

A. I did not.

The Court: Do you have any questions you desire to ask? [136]

Mr. Dudley: Yes, your Honor.

The Court: All right.

Cross Examination

Q. (By Mr. Dudley): Mr. Holm, do you recall inviting the Board of Directors of Coastal Plywood and Timber Company and myself down to the Santa Rosa Hotel, along with yourself and Mr. Steinberg for a dinner and meeting?

A. I did.

Q. And do you recall when that was?

A. That was prior to the final consummation of the sale.

Q. And the consummation of the sale was March 16, 1954?

A. I thought it was late April.

(Testimony of Fred Holm.)

Q. And do you recall at that time telling the Directors that you were not bound by any contract and that you would be glad to negotiate a sale with them, that you had to have that timber, desperately needed it at any price, and if they would give you a sale at a better price you certainly would take it?

A. I think that our entire visit and conversation was based upon the fact that the so-called Sugarman deal was rejected by the Court.

Q. And the contract that you had entered into expired on the 12th of March, is that correct?

A. The agreement that I had never did expire.

Q. Well, you were free of them, you could have been free of them? A. No.

Q. Before the confirmation? Didn't you tell the directors that you would be glad to negotiate a better price with them for the sale of that property?

A. If the Sugarman deal was not approved by the Court I would have sold it for the directors—or for the Trustee.

Q. And you told them also that you had to have that block of timber at any price no matter what it cost you, is that right?

A. I beg your pardon?

Q. You told them that you had to have that block of timber, Unit 2, you were desperately in need of timber, and you had to have it at any price?

A. Well, I don't recall a statement of that type. I am always in the market for timber.

Q. Have you resold any of that timber in Unit 2 that you bought?

(Testimony of Fred Holm.)

A. No, I am using it for my mill. [138]

Q. Now, when did you first go in the lumber business? A. I beg your pardon?

The Court: He said, "When did you first go in the lumber business?"

A. 1937.

Q. (By Mr. Dudley): Weren't you in the used car business at that time?

A. No, sir, I never have been in the used car business.

Q. You were in the lumber business in Washington at that time?

A. No, I was in the manufactured feed business and in the automobile finance business.

Q. The automobile finance business?

A. Yes.

Q. And when did you first go into business down here at Gualala?

A. I first came to Gualala in '47 looking for timber. I built a mill there in '49.

Q. In '49. You have been in the lumber business since 1949 there, is that correct?

A. No, in the lumber business since '37 in Oregon.

Q. I am talking about Gualala.

A. Gualala since '49.

Q. Since '49? A. Yes.

Q. Now who were these tracts of timber that you mentioned of [139] two and three hundred thousand feet that they got 5 per cent interest or real estate commissions on?

(Testimony of Fred Holm.)

A. The Evans tract.

Q. The Evans tract? A. Yes.

Q. Where is the Evans tract located?

A. Just south of the Coastal tract.

Q. Who made that sale?

A. The sale was made by the Cobb-Mitchell Company.

Q. Who? A. C-o-b-b M-i-t-c-h-e-l-l.

Q. Cobb-Mitchell Company, and where are they located? A. They are Oregon operators.

Q. Are they real estate commissioners?

A. I presume they are.

Q. Licensed to operate in California?

A. I presume that they have.

Q. And you know of your knowledge that they got 5 per cent commission on that sale?

A. I understand that was the commission.

Q. You understand. Where did you get your understanding?

A. In conversation with timber men and lumber men.

Q. Do you know who the timber men and lumber men were who told you that?

A. Just the friends that I have and know. [140]

Q. You don't know specifically though where you got the information that they got 5 per cent on the sale of that timber, is that it?

A. I just heard they received that commission.

Q. You mentioned another tract that you know about where they got 5 per cent. What tract was that?

(Testimony of Fred Holm.)

A. That is a number of smaller tracts that were sold by Herbert Cochrane of Ukiah.

Q. You mentioned larger tracts, two or three hundred thousand, two of them, I thought you said, is that correct?

A. That is the Evans tract I have in mind.

Q. That is the one occasion? A. Yes.

Q. And your information there, you don't know where you got it from, do you?

A. I beg your pardon?

Q. Your information on the sale of that tract that the real estate commissioner got 5 per cent, you don't know how you acquired that information, is that correct?

A. That is the general information, yes.

Q. All right. Do you know of any other sales of large timber tracts where a real estate commission was paid of 5 per cent?

A. In Oregon and Washington, hundreds of them.

Q. No, I am talking about California, I am sorry. Any of them in California? [141]

A. Well, I understand that that is the general commission that is paid on all tracts.

Q. Are you a licensed real estate commissioner?

A. I am not licensed to operate, I am a sawmill operator.

Q. But you don't have any license to sell real estate? A. No, I have no license.

Q. Have you ever sold real estate before on a deal like this where you got 5 per cent commission?

(Testimony of Fred Holm.)

A. I am not a licensed real estate broker. I sell my own property.

Q. This is the first time you have ever been involved in real estate where you were to get a commission in selling it?

A. I have been on a number of joint ventures.

Q. Have you ever been in a deal like this where you were to get a part of a 5 per cent commission for the sale of the real estate, timber properties?

A. Would you restate your question?

Q. Have you ever been in any other transaction like you testified to you were here where you got a percentage, you got 50 per cent of the real estate commission for the sale of timber, timber lands?

A. I have been in a number of transactions that I financed where I shared in the profits and so forth to the extent of 50 per cent, yes.

Q. All right, now, do you recall a meeting in the office of [142] the attorney, Mr. Berlin, I believe it is on Montgomery Street in San Francisco, on the day when the petition by a group of stockholders was being heard in this court in San Francisco, and you were present with myself and Mr. Berlin, Mr. Steinberg, Mr. Bost? Do you recall that meeting?

A. I was asked to attend that meeting.

Q. And who asked you to attend that meeting?

A. I think it was Mr. Steinberg.

Q. Mr. Steinberg was your attorney at the time, was he?

A. No, Mr. Steinberg didn't ask me in the capacity of my attorney, and there never has been a time

(Testimony of Fred Holm.)

when it was my wish or desire to upset the sale of the Coastal Plywood tract. I wasn't going to sell it and then go to Court and have it upset.

Q. And the reason for that is because you had to have the timber, your block of timber, at any price, at any cost, had to be sure you got that, is that correct? A. I wouldn't say that.

Q. You did state that, though, at that meeting, didn't you?

A. I am rather of the impression that you are re-quoting my statement.

Q. Approximately that, anyhow?

A. No. I never have to have any piece of timber.

Q. At that meeting did you show up with maps and facts and figures regarding the whole timber tract of Coastal Plywood & Timber Company and discuss with people there the various [143] numbers of board feet and the cost for the various tracts, how much you would be willing to pay for this Unit 2?

A. And those very maps were supplied me by Mr. Wilson.

Q. Yes, and you showed up with those maps there and you told them that you would go to court and testify regarding a plan proposed to be submitted by Mr. Berlin for the purchase, and you would testify that you would buy Unit 2 from him, is that correct?

A. That is a complete fabrication. I never made a statement of that type in my life.

Q. Didn't you tell Mr. Berlin that you would

(Testimony of Fred Holm.)

purchase Unit 2, and that you would go to court and testify to what you would pay for that unit to him?

A. I always have said that if the Sugarman sale was upset that I would buy Unit 2 from whomever purchased it.

Q. Now, if you bought Unit 2 from Mr. Berlin or someone else who submitted the plan were you still going to get a 5 per cent real estate commission, or 50 per cent of the 5 per cent real estate commission?

A. If it would have been the same deal I would have.

Q. What do you mean by the same deal, the Sugarman deal?

A. If it carried through on the original proposition as I started out to sell the Coastal properties I would have.

Q. Was that same deal the Sugarman deal or or——

A. Same deal as the Sugarman deal, yes.

Q. But if you had purchased it from Mr. Berlin under the [144] plan that he was submitting, then would you have gotten the 5 per cent commission?

A. That is only practical, my dear man. Mr. Berlin had nothing to sell.

Q. But you were there with Mr. Berlin assisting him in arranging another plan for the sale of the Coastal properties?

A. I never was there for that purpose.

Q. What purpose were you there for?

(Testimony of Fred Holm.)

A. I was there to protect my purchase of Unit No. 2 I was just an on-looker to see what was going on. I had been informed that the sale was to be upset legally. I was just a good listener and on-looker.

Mr. Dudley: I have no further questions, your Honor.

The Court: Any further questions?

Mr. McMurchie: No questions.

Mr. Olson: I would just like to ask two questions: If I understand you correctly, you are not a licensed real estate broker?

A. I am not; I am a sawmill operator.

Q. And you are also not a licensed business opportunity broker? A. I am not.

Q. But you expect to share in 50 per cent of whatever commission Mr. Wilson might recover?

A. It is a tentative understanding, yes. [145]

Mr. Olson: All right, no further questions, your Honor.

The Court: All right, you may step down.

The Witness: Thank you.

The Court: All right. Now, how much more testimony do you have, Mr. McMurchie?

Mr. McMurchie: I have only Mr. Wilson, your Honor, and I think I may call Mr. Stevenot under 2055.

The Court: You mean under 43-B?

Mr. McMurchie: Whatever it is, yes.

The Court: How much testimony will the Trustee have?

Mr. Olson: We anticipate calling only the Trustee, your Honor.

The Court: Then we should be able to conclude this afternoon.

Mr. McMurchie: We should be.

The Court: If that is the situation, it is now almost 12:30, we will recess until 2:00 o'clock, and then we will go forward and conclude the evidence.

(Thereupon an adjournment was taken until 2:00 o'clock p.m. of the same day.) [146]

Afternoon Session, Tuesday, July 6, 1954, 2:00 p.m.

The Court: Do you desire to call Mr. Wilson to the stand?

Mr. McMurchie: All right, step forward, Mr. Wilson. You have already been sworn.

ALEX E. WILSON

the Petitioner, a witness in his own behalf, resumed the witness stand:

Direct Examination—(Resumed)

Q. (By Mr. McMurchie): Mr. Wilson, I think the last time you were on the stand we had been discussing the sale of the Rickard, Brush and Remmell contracts to Mr. Clarence Nielson, is that correct? A. That is true.

Q. And your testimony was that the sale had been completed to Mr. Nielson for the \$100,000 purchase price and that sale had been confirmed by the Court and you had been paid a \$5,000.00 commission by Coastal Plywood & Timber Company, the debtor corporation? A. That is true.

(Testimony of Alex E. Wilson.)

Q. Now you have indicated some desire to correct your testimony with regard to the delivery of that \$5000 check from the Coastal Plywood & Timber Company? A. Yes, sir.

Q. Will you correct your testimony? [147]

A. At the last session of the Court I testified Mr. Stevenot handed me that check in his office. That is not substantially correct. Here is what really happened, on second thought; After the deal was closed I went up to Mr. Stevenot's office the next day or the day after expecting to get my check. When I walked into Mr. Stevenot's office Mr. Martin Dyke was in the office. Martin Dyke was the Manager of the Coastal Plywood mill at Cloverdale. The check I had in mind was this: Mr. Stevenot took from his office the \$100,000 Nielson check, he handed that check to Mr. Dyke, and Mr. Dyke turned to me and handed it to me and looked at me and said, "Wilson, that was a very good deal."

I said "Yes, Mr. Dyke," and handed it back to Mr. Dyke.

I stood there a few minutes, and Mr. Stevenot said, "Mr. Wilson, you will receive your \$5000 commission check in the mail in a day or so from Coastal."

And in a day or so I did receive it in the mail.

I had made that error.

Q. And the stub of the check is what has been introduced as the Petitioner's Exhibit No. 2, isn't that correct? A. Yes.

(Testimony of Alex E. Wilson.)

Q. And that stub states "Commission, sale of cutting contracts, \$5000"?

A. Coastal Plywood, yes.

Q. Now, had you had any discussion with Mr. Stevenot prior [148] to the completion of the sale of these contracts to Mr. Nielson in regard to your commission?

A. I had many discussions with Mr. Stevenot about my commission during all the time I worked on the cutting contracts. Mr. Stevenot kept telling me, time after time, "I don't want to pay you, you must get your commission from the buyer."

I would retaliate saying, "Yes, Mr. Stevenot, if possible, but you can't get any commission from the buyer."

That was mentioned many times, that is a very difficult thing to do, because brokers look with great disdain on that sort of procedure, because there is too much chance of fraud.

For example, Mr. X wants to sell his timber for a million dollars. I represent the seller. If the buyer is going to pay me, some unscrupulous broker can easily say, "Well, Mr. X is in bad financial straits, give me \$700,000, we will make him take it." You have a divided—you are serving two masters. You can't do that in brokerage, and that is why brokers always look to the seller, because they are the men they are representing, and they are the people they are confidential with.

Q. They represent the seller, and they expect to be paid by the seller?

(Testimony of Alex E. Wilson.)

A. They represent the seller and they expect to be paid by the seller, and they expect to get for the seller the largest [149] possible price.

Q. Now, prior to this sale to Mr. Nielson, Mr. Wilson had authorization from the Court ever been obtained for you to proceed as a real estate broker?

A. No, sir, I never knew an authorization was necessary.

Q. You did not know of your knowledge that there was such a thing as an authorization in a re-organization proceeding? A. No, sir.

Q. But you did, in spite of those two facts, receive your commission from the Coastal Plywood & Timber Company? A. I did, sir.

Q. And that was a \$5000 commission on a \$100,000 sale? A. That is correct.

Q. And that would be 5 per cent of the total purchase price? A. That is so.

Q. Now, Mr. Wilson, were there any other assets of Coastal Plywood & Timber Company which you were asked to sell for the Trustee?

A. Yes, there were. I don't know how they were set up on the books, but I think about \$2,000,000.

Q. Can you tell me what these assets were?

A. Those assets of personal property were the mill at Cloverdale, which had been appraised by the American Appraisal Company, Mr. Stevenot gave me that, for \$1,750,000; there was the log deck, there was the lumber in [150] the yard and the rolling stock. I believe they have that on their books at \$2,000,000.

(Testimony of Alex E. Wilson.)

Q. There was also timber in the balance of these assets, was there not, the Garcia tract was included in the balance of these assets?

A. Oh, yes, the balance, but that wasn't the personal property, that was real estate.

Q. Well, I am speaking now of all of the balance of the assets.

A. Oh, yes, what I have named, the personal property, plus 585,000,000 feet of timber, plus 36,000 acres of land.

Q. When were you first asked to sell these assets of Coastal Plywood & Timber Company? Tell me first where the conversation was, and who was present?

A. It was in July, 1952. I had gone to Mr. Carr's office. Mr. Carr, of course, was attorney for the Trustee and he was attorney for the Court, Judge Lemmon at that time presiding. I had sold lots of timber and Mr. Carr knew it, and he asked me to go down to Mr. Stevenot's office in the Bank of America Building, main branch, in San Francisco, to see Mr. Stevenot.

I introduced myself and talked to Mr. Stevenot about selling the Coastal properties.

Q. Did you go to Mr. Stevenot's office?

A. I did. I went to Mr. Stevenot's office, talked to him about it. He said he was delighted that I came down, had many [151] brokers trying to sell the properties, but they had not succeeded.

He said that the first that he wanted to sell was the Brush, Remmell and the Rickard contracts. He

(Testimony of Alex E. Wilson.)

wanted to do that for two reasons, he told me. No. 1, they had bought quite a lot of machinery and had no money to pay for it, and they wanted to pay for that additional machinery. No. 2, there was a clause in the contract where all the timber had to be taken off those properties by 1956.

There was another bad clause that said that all the land must be cleared. It didn't follow the usual timber contract where it says according to State and Federal laws.

The owners were angry about that, and were trying to cancel the contracts.

Another very bad situation was Mr. Swisher, who had sold the "Y" Ranch to Mr. Nielson reserved the roads and the rights of way, and that "Y" road which Mr. Swisher kept control of in his contract with Nielson had to be obtained to get the Rickard timber out.

So all in all they were contracts under which Coastal couldn't operate and as I found out later nobody could operate under.

Q. These are the contracts now that you are discussing that you sold to Mr. Nielson?

A. That is true, sir. [152]

Q. Was there any conversation at that time in regard to the sale of the balance of the assets?

A. Yes. Mr. Stevenot then told me, immediately, he told me right then, he said, "Now, we want to sell all the rest of the assets also because the property is not making any money, the RFC is threatening to foreclose, and personally I am tired of this, I

(Testimony of Alex E. Wilson.)

have other business to do, and I want to get out of this, but you sell to Nielson first, and if you are successful in so doing then I want you to continue and sell the remainder of the assets also.”

Q. Did you have subsequent conversations with Mr. Stevenot in regard to the sale of the balance of these assets of Coastal?

A. Many, many conversations.

Q. And when did you start—well, let me ask you this:

During these conversations what requirements did Mr. Stevenot make in regard to the sale of these assets, if any?

A. I suggested to Mr. Stevenot that it might be very fine and that I thought I could make a lot of money for the stockholders if he would let me sell them piecemeal. There was a lot of timber to sell in one block. But Mr. Stevenot told me that he didn’t want to do that, he said we must sell all the property in one package, because I do not want to go before the court and ask for permission to sell 50,000,000 feet and 100,000,000 feet. I just don’t want to do that, I want to sell the whole thing in one package. [153]

Q. Were there any other requirements that Mr. Stevenot made in regard to the sale?

A. Oh, he made a number of requirements. A particular one was he said, “Now, Alec, the Bank of America has a million dollar mortgage, the RFC has a million dollar mortgage, there is a lot of interest due, the company is behind in interest, I have

(Testimony of Alex E. Wilson.)

large fees to pay in the trusteeship," he has 50,000 coming, and he said, "There is \$80,000 to go to the lawyers, and whoever buys this must be a buyer with sufficient money to pay these obligations, and if they wish to carry the mortgages in the sum of two million they must have, of course, a background so that the RFC and the bank will accept them."

Q. In other words, he required that you either produce a purchaser with cash sufficient to wipe out his secured creditors—— A. Oh, definitely.

Q. ——or with a financial background that was substantial enough that they could take over and re-finance these secured creditors?

A. That is true. And then I had conferences with Mr. Carr just as much as I did with Mr. Stevenot, and Mr. Carr told me at all times—I knew him well, he had been my attorney and my friend for a quarter of a century. He said, "Alex, there is one thing I want you to keep continually in mind, and that is as far as I am concerned I want these stockholders to be paid off dollar for dollar, and I don't want you to bring a deal in here under which the stockholders will not be paid." [154]

Q. Mr. Stevenot make any requirement in regard to the total purchase price?

A. Yes, sir. Mr. Stevenot told me time and time again, I would say, "Well, how much money, Mr. Stevenot, must I bring in, or what must I ask my buyer for?"

Mr. Stevenot would very often say, "Well, you bring in a proposition."

(Testimony of Alex E. Wilson.)

I said, "No, I can't do that, I must have a figure." So finally Mr. Stevenot said, "Well, Alec, I will tell you, you bring in an offer of \$4,000,000 with substantial people, and I am quite sure that the Court will approve the deal."

Q. Now, following these conversations with Mr. Stevenot did you proceed in your efforts to sell the balance of these assets of Coastal? A. I did.

Q. Can you tell us some of the people that you contacted, some of the firms that you contacted in an effort to find a purchaser?

A. Yes, I can. This is a partial list (referring to document), I didn't keep a list of everybody——

Mr. McMurchie: Just one moment, Mr. Wilson, I think the attorneys will want to see that.

(The document was handed to Mr. Olson.)

Mr. Olson: If your Honor please, I am going to enter an objection to this line of testimony on the ground it has no relation [155] to the sale to the Sugarman Lumber Company, or the second plan of reorganization, which I understand is the basis of their claim. This is a list of companies which, as I understand it, none of the assets of the debtor were sold to any of these companies, and they had no participation in the second plan of re-organization.

On that basis, your Honor, on the ground that this inquiry is not relevant to the question before the court today, I will object to any question bearing upon contacts with other companies.

Mr. McMurchie: If the Court please, I believe our petition is framed for the reasonable value of

(Testimony of Alex E. Wilson.)

services performed, which were for the benefit of this estate and performed at the request of the trustee. Now if we are going into the reasonable value of services performed, I think it is necessary that the court know what services were performed, what work was done.

The Court: I presume those are copies of letters to business firms and individuals——

Mr. McMurchie: That is correct.

The Court: ——offering to sell the properties.

Mr. McMurchie: Correct, and also letters from them to Mr. Wilson.

The Court: I will overrule the objection. It goes to show the scope of his activities.

A. I started to—— [156]

The Court: I don't want a long narration on each one of these, Mr. McMurchie, I don't consider it that important.

Mr. McMurchie: Yes. Well, can you give the court briefly the names of the more important people that you contacted, and what you did with them?

A. Yes, sir.

The Court: All right.

A. I will go through them rapidly.

I started to work on the remainder of the assets in October of 1953. I first went to Martell, which is up near Jackson, to see the Winton Lumber Company, and asked for the manager, Andy Kearns.

Briefly, he sent a man with me and we spent a

(Testimony of Alex E. Wilson.)

day and a half looking over the timber of the Garcia.

I next went to see John Hunter of the Twin Cities Lumber Company of Los Angeles. I sold him timber before. He is a man who made a lot of money in the timber business.

I took maps down to him, reports, et cetera. He studied it for a week or so and then turned the property down.

I then contacted Rex Black, President of the Georgia-Pacific Plywood Company. Its Oregon office is at Portland.

The same thing, maps, reports, et cetera. Finally turned the property down.

A. S. Murphy, President of Pacific Lumber in San Francisco. After giving him maps, reports and so forth he turned the property [157] down and stated he would not pay over \$5 a thousand for any timber in the district. I so told Mr. Stevenot about that, because that was shocking to me.

Q. Where did you obtain these maps, Mr. Wilson?

A. I had these maps made by Hammon, Jensen and Wallen of Oakland, the people who made the cruise for Coastal Plywood Company.

Q. At your own expense?

A. Yes sir, at my own expense.

I went to Sid Topol of the Dover Lumber Company of Marysville.

The same procedure. I will just say the same pro-

(Testimony of Alex E. Wilson.)

cedure. That calls for maps, explanations, letters and so forth.

I also contacted Armon Speckert, President of the Speckert Lumber Company of Marysville.

Castille Lumber Company at Willits.

Welsh Brothers, Willits, California.

Orem Lumber Company of Newport, Oregon.

John Bate, of the Bate Lumber Company, of Portland.

J. E. Duffy, Vice-President of the Diamond Match Company of New York, Vice-President and Manager.

Q. Mr. Wilson, are these personal contacts now, or are you referring to letters?

A. Some were personal and some were by letter. Shall I——

Q. I think you better indicate which is which.

A. Well, Andrew Kearns was personal.

John Hunter was personal.

Rex Black is letter.

Sid Topol is personal.

Armon Speckert is personal.

Castille Lumber Company is personal.

Welsh Brothers is personal. All trips by me to see these people.

Orem Lumber Company of Newport, Oregon, that is by correspondence.

John Bate, Bate Lumber Company, Portland, that is by letter.

J. E. Duffy, Vice-President and General Manager

(Testimony of Alex E. Wilson.)

of Diamond Match Company of New York City, that is by letter.

When I say letter, I sent him maps, I sent reports, I sent full information of the company.

Pickens Brothers Logging Company of Silverton, Oregon. Letters again and maps.

Alexander Lumber Company of Gold Beach, Oregon. I went to Gold Beach to see them.

G. R. Van Fleet, of Cannon Beach, Oregon. I not only went up to Cannon Beach and got Mr. Van Fleet and brought him down to Coastal and we spent four days. We stayed in Ukiah at the Palace Hotel, and rode over there every day. He finally turned it down. [159]

Chauncey T. Pettibone, Springfield Mills, Springfield, Oregon. That is maps and letters.

Ralph Smith of the Smith Lumber Company, Cottonwood, California. I went to Cottonwood and saw Ralph Smith and told him all about this thing, and he finally turned it down. He looked like a good prospect, for a while.

Patten-Blynn Lumber Company of Los Angeles. I went personally to see George Patten, I used to work for Patten-Blynn Lumber Company. I went down to see George Patten about it.

Garrabrant Lumber and Investment Company of Willamina, Oregon. That was by letter and maps.

R. C. Miller Logging Company of Arcata, California. That is maps, letters, et cetera.

Thomas Huddleson of Hubbard, Oregon. That again is by letter and maps.

(Testimony of Alex E. Wilson.)

Jude White, President of Long Bell Lumber Company of Longview, Washington. Maps, reports, letters, et cetera, and after each one of these they turned the property down.

Burney Lumber Company of Marysville. That is personal.

Dant & Russell of Portland, Oregon. I went to Portland to see Bob Dant. He is a very good friend of mine. I beg him to take this property and I told him I could make him at least \$2,000,000, and he refused to take it. I have sold lots of property to Dant & Russell.

Eugene Brewer, the General Manager of the U. S. Plywood [160] Company in Cottonwood. I went three times to see George Brewer—Eugene Brewer at Cottonwood. He sent three men, one of his foresters, and they spent five days on the property. Mr. Brewer then flew to his eastern headquarters. I kept in touch with him for a week, and while back there he phoned me and said they turned the property down.

Earl Birmingham, President of the Hammond Lumber Company, San Francisco.

High Sierra Pine Mills, of Oroville, California. I took the matter up with Lou Ohlsen. He sent his cruiser over with me and spent three days on the property, Dave Rogers, the forester.

Feather River Pine Mills of Feather Falls. I went two days on the property with Carl Walker, General Manager of the Feather River Pine Mills.

Bercut-Richards Cannery, they operate the Grays

(Testimony of Alex E. Wilson.)

Flat Lumber Mill in eastern Yuba County. I sold them all of their timber. I gave them maps, reports, letters, and so forth.

Paradise Lumber Company, Bernard Richter, of Oroville. Bernard Richter and I spent three days on this property. I went over to Oroville, got Mr. Richter and took him to the property.

Crofoot Lumber Company of Ukiah. Those are by maps, letters, and so forth. I did not take them to the property.

Lincoln Lumber Company of Oakland. They operate three [161] mills in Butte County. Their Forester is Robert Kitchen. I took Bob Kitchen over that property. We stayed for three days looking it over.

Ken Metzker of Metzker Lumber Company of Reno, Nevada. Maps, letters, et cetera. Those are some of the most important. Attached hereto are all their replies to me, of why they didn't want the property, their criticisms of the property. These are their replies to me. (Indicating documents.)

Q. And copies of your letters to them?

A. And copies of my letters to them.

Mr. McMurchie: I offer these as Plaintiff's Exhibit next in order, your Honor.

The Court: They will be admitted in evidence as Petitioner's Exhibit No. 7, all in one group.

Mr. Olson: May we have the same objection, your Honor?

The Court: Yes, you may, and it will be overruled.

(Testimony of Alex E. Wilson.)

(The documents referred to were marked Petitioner's Exhibit No. 7.)

Q. (By Mr. McMurchie): Now, Mr. Wilson, your testimony here has involved considerable traveling, has it not? A. Yes, sir.

Q. And that traveling was all at your own expense? A. All at my own expense, yes, sir.

Q. Were you reimbursed by anybody for that traveling? A. By no one. [162]

Q. Who paid your expenses during all of this traveling?

A. I paid all of my expenses for the 11 months I put in on this deal and 90 per cent of my entire time for 11 months was devoted to the sale of the Garcia Tract and the Coastal Properties.

Q. Do brokers do any entertainment of clients when he has them out on a survey like this?

A. With timbermen you do terrific entertaining.

Q. I presume that also is at your own expense?

A. All at my own expense, yes sir.

Q. Do you have any estimate, Mr. Wilson, as to the expenses which you incurred during this 11 months period?

A. In my traveling on all deals of this kind I appropriate \$50 a day for expenses, which would make \$15,000, and other obligations I had, I estimate \$20,000, with my time and expenses during the 11 months.

Q. Now during the period that you were doing all of this work, Mr. Wilson, did you keep in contact with Mr. Stevenot, the trustee?

(Testimony of Alex E. Wilson.)

A. I was in Mr. Stevenot's office two or three times a week when I was in San Francisco, I wrote him reports when I was there and when I was away from San Francisco, and kept him informed of every move I was making at all times.

Q. Did you obtain any information from him during this time?

A. All the information I received in connection with the company [163] was received from him, the maps, the cruises, the company reports, inventories of the mill and everything came from Mr. Stevenot.

Q. You contacted him personally at his office?

A. Many, many, many times.

Q. Call him on the telephone?

A. Many times.

Q. Wrote him letters?

A. Wrote him letters, yes sir.

Q. I hand you here a letter, Mr. Wilson, which is on the letterhead of Alex E. Wilson, which purports to bear your signature. Did you write that letter?

A. I did.

Q. And did you mail that to him?

A. I did.

Q. It has been produced from Mr. Stevenot's file, is that correct?

A. Yes, sir.

Mr. McMurchie: I offer this as Plaintiff's next in order, your Honor.

The Court: Any objection?

Mr. Olson: No objection except the same objection I made before.

(Testimony of Alex E. Wilson.)

The Court: It will be Petitioner's Exhibit 8. Your objection is overruled. [164]

(The document referred to was marked Petitioner's Exhibit No. 8.)

The Court: It is a letter from Wilson to Stevenot?

Mr. McMurchie: That is correct. The letter is dated April 3, 1953.

"I have had two unfortunate experiences.

"First, I tried to sell the Coastal timber to the Hammond Lumber Company. Earl Birmingham, now President of Hammond, is a good friend of mine. He also came from Oroville. He finally turned the deal down.

"Then I started working with Pacific Lumber. Today, much to my disappointment, Mr. Murphy said he did not want the property.

"However, we will not be discouraged.

"Cordially,

"Alex E. Wilson."

He adds a P.S.: "Holm bought the May property, about 18,000,000 feet, not far from his mill. I don't know who sold it. I think he bought it direct. I do not know what he paid."

Q. (By Mr. McMurchie): Mr. Wilson, do you recall anything about that P.S. on that letter?

A. Yes. Mr. Stevenot had heard that Mr. Holm had bought a piece of timber in that neighborhood and asked me who he bought it from, if I knew who he bought it from and what he paid for it, so I reported to him. [165]

(Testimony of Alex E. Wilson.)

Q. This is a reply to that request of Mr. Stevenot?

A. Yes sir, that is in answer to Mr. Stevenot's question.

Q. I hand you now a letter dated April 7, 1953.

A. Yes, that is a letter that I wrote to Mr. Stevenot, yes sir.

Q. That is your signature? A. It is.

The Court: What is the date of the letter?

Mr. McMurchie: It is April 7, 1953.

I offer this as next in order, your Honor.

The Court: It will be received as Petitioner's Exhibit No. 9.

Mr. McMurchie: If I may read that, your Honor.

The Court: You may.

Mr. McMurchie: The letter reads:

"I have the following rather encouraging report to make to you. The Welsh Brothers, Elwood and Jeff, of Willits, are fine prospects for the Coastal timber and mill. I first met these gentlemen about 18 years ago when I was gold dredging in Oregon. They had a large stand of ponderosa pine near John Day. A few years ago they sold the tract for, I am told, two million. Recently they bought the Charles Howard Ridgewood ranch where the famous Seabiscuit was kept. They bought this for cash. They then bought a large pine tract, 60,000,000 feet, at north San Juan, and sold it at a good profit. In short, [166] they are well financed. They have a

(Testimony of Alex E. Wilson.)

sawmill at Willits and are building another on the old Howard Ranch.

“For some time I have been flirting with them in the hope they would take hold. Yesterday they telephoned me stating they are ready to talk business on the Coastal Timber. I am to telephone them next Sunday for a date the middle of next week. I shall report to you before I go to Ridgewood Ranch and will ask again to borrow your cruise. These fellows would be a natural for the Coastal property.

“The above is good news. So that you will be informed as to what I have been doing I recite the following. I have negotiated with the following, but up to now with no luck:

“A. S. Murphy, Pacific Lumber; Earl Birmingham, Hammond Lumber Company, Winton Lumber Company, Georgia Pacific Plywood Company, Castile Lumber Company, Speckert Lumber Company of Marysville. This man still is interested. He offered \$9 for Nielson Timber and Mr. Nielson turned the offer down. I know he made a mistake. Dover Lumber Company of Marysville. They need timber and are still good prospects. Twin City Lumber Company, Los Angeles. Patten-Blynn Lumber Company, Los Angeles, Feather River Pine Mills.

“The last paragraph merely for your information.

“With kindest regards, I am

“Yours truly,

“Alex E. Wilson.” [167]

Q. (By Mr. McMurchie): Mr. Wilson, I will show you a letter dated June 9, 1953.

(Testimony of Alex E. Wilson.)

A. That is true. I wrote that to Mr. Stevenot on that date.

Mr. McMurchie: I ask that it be introduced as Petitioner's Exhibit next in order.

The Court: Subject to the same objection it will be admitted in evidence.

(The document referred to was marked Petitioner's Exhibit No. 10.)

Mr. McMurchie: Addressed to Mr. Stevenot.

"You had asked me to give you a list of companies or individuals to whom I have tried to sell the Coastal Plywood properties.

"At present I am working with the J. J. Sugarman Company and have great hopes that they are going to submit a proposition to you. They are now planning on coming to San Francisco to conference with you.

"Others to whom I have submitted to Coastal properties are" — and there are a list of 26 firms listed in the letter.

"In some cases I took the prospects to the property. I have in my files the correspondence with the above concerning the deal. In addition I have submitted to deal to several individuals whom I shall not bother to mention herein."

Q. Did you supply this list at the request of Mr. Stevenot?

A. I did, sir. He asked me for it. [168]

Q. Now, I note in this letter of June 9, 1953 mention of J. J. Sugarman Company?

A. That is true.

(Testimony of Alex E. Wilson.)

Q. Those are the clients who eventually purchased this property from Coastal?

A. That is true.

Q. And this is the first time you notified Mr. Stevenot in writing that J. J. Sugarman Company were your clients?

A. I had notified him in person several times, but I included it in that letter in writing for the first time.

Q. This is June 9, 1953? A. That is true.

Q. I will show you a letter of June 21, 1953?

A. Yes. That is to Mr. Stevenot. Yes, that is written by me on that date. That is my signature.

Mr. McMurchie: I offer this as Plaintiff's Exhibit next in order.

The Court: All right, Petitioner's Exhibit 11.

(The document referred to was marked Petitioner's Exhibit No. 11.)

Mr. McMurchie: This is dated June 21, 1953 on the letterhead of Alex E. Wilson, addressed to Mr. Stevenot.

"I went today, per schedule, to the office of Mr. William Steinberg, who has represented that he represents the Sugarman Company of Los Angeles and New York. [169]

"The upshot was that Mr. Sugarman did not arrive. Mr. Steinberg informed me that after studying the deal the Sugarman Company decided they did not want the deal. Quite a surprise to me after such assuring talk.

(Testimony of Alex E. Wilson.)

"However, I immediately talked over the telephone to Mr. Eugene Brewer, President, U. S. Plywood Corporation, Shasta Division. Mr. Brewer, whom I know and who is a very reliable man, states that he is sure his company will be interested. Today he is telephoning to his New York office. I have left for Redding, California to see Mr. Brewer and will be in his office tomorrow.

"Hoping that the above will develop, I remain

"Your truly,

"Alex E. Wilson."

Q. This is a letter of June 21st, Mr. Wilson?

A. That is true.

Q. You recall that Mr. Sugarman did not arrive for the scheduled conference?

A. That is correct.

Q. —some time prior to this letter of June 21st?

A. Yes, sir.

Q. I will show you a letter dated July 17, 1953.

A. To Mr. Stevenot, July 17th. I wrote him the letter, yes sir, and that is my signature.

Mr. McMurchie: I offer that as next in order.

The Court: Petitioner's Exhibit 12.

(The document referred to was marked Petitioner's Exhibit 12.)

Mr. McMurchie: Dated July 17, 1953 from Mr. Wilson to Mr. Stevenot.

"The following will bring you up to date in my attempts to sell the Coastal Plywood properties.

"1. Mr. Gene C. Brewer, President of the United

(Testimony of Alex E. Wilson.)

States Plywood Company, has a crew of men going over the timber holdings. This group is headed by Harry Russell, log production manager for U. S. Plywood. Within a few days Mr. Brewer will write us a letter stating his plans.

“2. The Sugarman Company, represented in this city by Mr. William Steinberg, has again come back into the picture as possible buyers. Today Mr. Steinberg asked me to come to his office. He now states that within a few days he is going to hand me a proposal accompanied by a check.

“3. Within a day or so I will go to Reno where I am to meet Norman Biltz, a very wealthy investor. He is interested in the property and may give me a proposal to hand to you.

“Will keep you informed. I remain yours truly,

“Alex E. Wilson.”

Q. Now this is dated July 17th of 1953, Mr. Wilson? A. Yes, sir.

Q. And it mentions that the Sugarman Company has come back [171] into the picture and hopes to hand you a proposal within a few days?

A. That is true.

Q. And as I recall, the proposal of Sugarman Company which has been introduced as an exhibit—— A. Was July 22nd.

Q. ——was July 22nd, five days later?

A. That is true.

Q. Now, Mr. Wilson, during these negotiations did Mr. Stevenot give you any information as to

(Testimony of Alex E. Wilson.)

the amount of timber that was on that land up there?

A. He did—at first there was not a cruise, but Mr. Stevenot had a cruise made and he gave me a copy of the cruise.

Q. Do you know when that cruise was made?

A. I have forgotten. It should be there, the date is on it.

Q. Was it September of 1952?

A. Yes, it was, made by Hammon, Jensen & Wallen.

Q. You used that cruise in your negotiations with these potential purchasers? A. I did.

Q. And you obtained that cruise from Mr. Stevenot, did you? A. I did.

Q. Let me ask you this: Did you obtain any information with regard to the Coastal properties from anyone other than Mr. Stevenot? [172]

A. No one but Mr. Stevenot.

Q. He gave you all of the information you requested to carry on these negotiations?

A. He was very cooperative, he gave me every assistance in the world.

Q. And you kept in continual contact and association with him?

A. I kept in continual contact with him by word of mouth, by telephone and by letter reports.

Q. No question but what he knew that you were working on the sale of the Coastal assets?

A. Oh, definitely not.

(Testimony of Alex E. Wilson.)

Mr. Olson: If Your Honor please, I object to counsel leading the witness.

The Court: Yes.

Q. (By Mr. McMurchie): Let me ask you this:

Did you ever discuss your work in attempting to find a purchaser for these assets with Mr. Sterling Carr, who was attorney for the trustee?

A. Many times.

Q. Where were those conversations held?

A. In his office in the Crocker Bank Building in San Francisco.

Q. Would you relate those conversations?

A. Yes. I would report to Mr. Stevenot and I would go over to see Mr. Carr, he would tell me Mr. Stevenot thought a lot of [173] me as a salesman and he was sure that I would sell it and it had to be sold, because the RFC wanted their money, that there was a change of administration in the RFC and that interest was due, and if a foreclosure came the stockholders would lose everything, there wasn't a chance for them to get out.

Q. Mr. Carr and Mr. Stevenot encouraged you in every way? A. Encouraged me at all times.

Q. Now, did you and Mr. Stevenot ever discuss during the period of these negotiations the commission that was to be paid to you in the event that you completed a sale of these assets?

A. Many, many times.

Q. Would you relate the conversation in that regard?

(Testimony of Alex E. Wilson.)

A. These conversations would take place in his office, Mr. Stevenot would tell me that he didn't want to pay me and he would say, "Alec, I want you to get your commission from the buyer."

I would retaliate saying, "Mr. Stevenot, you can't do that. In my 33 years as a broker I have never received a commission in my life from a buyer."

Mr. Stevenot would follow the same pattern in the next meeting, always stated he wanted me to get the commission from the buyer.

I asked him one day, I said, "Mr. Stevenot, why do you take that particular position? You know that that is an impossible thing to do."

He said, "Well, I have a lot of fees to pay, I have got my [174] own fee, and the attorney's, and I *just want* to go before the Court and ask for additional fees."

Q. Mr. Wilson, during these discussions did you ever reach a definite understanding with Mr. Stevenot that you would not obtain your commission from Coastal?

A. Never a definite understanding, no, until the 22nd day of July and then I had a definite understanding.

Q. Did you ever have a definite understanding with him that you would obtain your commission from the buyer?

A. No, and I believed that he would pay me, because he followed the same pattern when I sold the Nielson deal, he always told me he wouldn't

(Testimony of Alex E. Wilson.)

pay me, but he did pay me in the final analysis.

I also told Mr. Carr, I would report to Mr. Carr and I would tell him that Mr. Stevenot told me that he wouldn't pay me. Mr. Carr would urge me to continue. He said, "Stevenot is quite a decent fellow, he won't do that in the final analysis. He is not going to cheat you out of your brokerage if you sell it. Stevenot is all right, he is a good businessman and he will pay you."

Q. Did Mr. Stevenot ever tell you not to proceed if you could not get your brokerage from the buyer?

A. No, quite the contrary; he urged me at all times to sell it, to continue to attempt to.

Q. Did Mr. Stevenot ever inform you that it might be best [175] to obtain court authorization for your services?

A. No sir, I didn't know that was necessary.

Q. Did you have any knowledge of your own that authorization was required or might be required?

A. No sir. I am not a lawyer, I am a timber salesman.

Q. You stated that your arrangement for a commission in the Nielson transaction and in this transaction for the sale of the balance of the assets were exactly the same, is that right?

A. The same pattern exactly.

Q. Did you have any prior authorization from the court in the Nielson matter? A. No, sir.

(Testimony of Alex E. Wilson.)

Q. Any reason to believe that the sale of the balance of these assets would be any different than the sale of the contracts to Nielson?

A. No, sir.

Q. Mr. Stevenot cooperated with you in both transactions, is that correct?

A. A hundred per cent, 100 per cent at all times.

Q. Exactly the same, except that you weren't paid on the last transaction?

A. That is correct.

Q. Now, did you eventually find a purchaser for the balance of the assets of Coastal?

A. I did. [176]

Q. What was the name of that purchaser?

A. The Sugarman Lumber Company.

Q. Will you tell me when you first contacted the Sugarman Lumber Company?

A. I had taken a trip to Redding to try to get the U. S. Plywood Company to come back into the deal. After they had turned it down I thought—by the urging of Mr. Stevenot, because he said he hoped I could sell it to them because they were rich people.

I said I would go up again and try to get Brewer to change his mind.

I couldn't, and I came back to my office at 155 Montgomery Street about 3:00 o'clock in the afternoon. Mr. Redge Kuhen was sitting there. Redge comes into my office very, very often.

(Testimony of Alex E. Wilson.)

And I said, "Well, I have failed again on this Coastal deal."

He said, "Well, I know a man who will buy it."

I said, "Do you?"

He said, "Yes, there is a lawyer over here by the name of William Steinberg. I was talking to him yesterday, and he said he had a very rich client by the name of Sugarman."

He said, "He will buy that property."

I said, "Well, let's go over right now, take me over to Mr. Steinberg's office."

And he took me over to Mr. Steinberg's office on Market [177] Street, Market and Montgomery, and introduced me to Mr. Steinberg.

Q. Can you tell me about when that was, Mr. Wilson?

A. That was—I noted it down here, I think I noted it when I met Steinberg. Met Steinberg April 1953.

Q. April of 1953? A. Yes, sir.

Q. Who was present at the time of this conversation?

A. At this conversation Mr. Redge Kuhen, Mr. Steinberg and I.

Q. Did Mr. Steinberg tell you at that time who he represented?

A. Yes, sir. He said that he represented—not only represented but was an associate also of Mr. Sugarman and Associates of Los Angeles, and that

(Testimony of Alex E. Wilson.)

they were looking for just such a property as I had for sale.

Q. Did he name any of the associates, Mr. Wilson?

A. Yes, he did. He said that Mr. Barney Margolis was one of them and two of the Sugarman and himself, Mr. Steinberg.

Q. Did you discuss the Coastal deal with Mr. Steinberg?

A. I did at great length, and I turned over to Mr. Steinberg on that day many of the documents that I had. I think the cruise, some of the maps, the report of the company, which all of it Mr. Stevenot had given me, and then——

(Mr. McMurchie handed a document to Mr. Olson.)

The Court: How much longer do you think you will have on direct examination of this witness?

Mr. McMurchie: I would say about 15 or 20 minutes, Your [178] Honor.

The Court: Well, hurry it along.

Mr. McMurchie: I will show you, Mr. Wilson, a letter addressed to Mr. William Steinberg. Is that your handwriting?

A. That is my signature, and I did send that to Mr. Steinberg.

Q. And that is a list of things that you handed to Mr. Steinberg, is that right?

A. That is a list given to me by Mr. Stevenot.

(Testimony of Alex E. Wilson.)

Mr. McMurchie: I will introduce this to show the documents turned over to Mr. Steinberg.

The Court: All right, it will be admitted in evidence as Petitioner's Exhibit 13.

(The document referred to was marked Petitioner's Exhibit No. 13.)

Mr. Olson: What is the date of that letter?

Mr. McMurchie: Oh, I am sorry, a letter dated May 29, 1953, on the letterhead of Mr. Alex E. Wilson, addressed to Mr. William Steinberg.

"In connection with the possible purchase of Coastal Plywood by your client, J. J. Sugarman, I am sending you the following data:

"1. Detailed inventory, given to you a few days ago.

"2. Letter from Speckert Lumber Company stating that they will take the sugar pine logs from Coastal properties at [179] \$60 per thousand covered in their pond at Marysville.

"3. Letter from Holm-Solbeck Lumber Company stating that that company will purchase for \$8 fir, and \$8 for redwood, but for \$9 in each case if land goes also.

"4. Financial report of Holm-Solbeck Lumber Company which must be returned to that company by June 5 next.

"5. Totals of cruise for Coastal Plywood timbers showing five hundred fifty"—

The Witness: Million.

(Testimony of Alex E. Wilson.)

Mr. McMurchie: Million, yes—"board feet on 35,000 acres of land.

"6. Coastal report of trustee for quarter ending March 31, 1953.

"7. Property map of Coastal Plywood Company showing location of timber.

"It is our understanding that you are to send this data to the J. J. Sugarman Company for their study over Saturday and Sunday and that then Monday or Tuesday Mr. Sugarman is to come to San Francisco where we will attempt to purchase for him the properties of the Coastal Plywood Company."

Q. All of this information then was given to Mr. Steinberg, is that correct? A. Yes, sir.

Q. So far as you know it was digested by him and forwarded to his client? [180]

A. That is true.

Q. Now, was there any particular requirement that the Sugarman interests made before they would make an offer to the Sugar Lumber Company?

A. Yes, sir.

Q. What——

A. Mr. Barney Margolis wrote a letter to Mr. Steinberg and Steinberg brought it over to show me, and the letter stated that he, Mr. Sugarman and their associates would purchase the Coastal Plywood Company assets according to all the information I sent to them, but that before they would put

(Testimony of Alex E. Wilson.)

up their money they wanted me to resell all of the assets, before they bought any of them.

Q. And there I believe is Plaintiff's Exhibit 5, the letter from Mr. Margolis to Mr. Steinberg you were referring to? A. Yes, sir.

Q. What did you do in regard to this resale of the assets?

A. I went over to Mr. Steinberg's office, and I had been talking weeks before to Mr. Holm, I knew that he would take 200,000,000 feet and he told me that he knew other men who would also buy portions, and I told Mr. Steinberg, I said, "Yes, I can do that."

And he seemed to be quite pleased with it, and he said, "Well, Alec, if you can do that, why, we have a deal, the Coastal is sold." [181]

I said, "Why, certainly I can do it."

And he said, "Well, who would you sell them to?"

Well, I said——

Mr. Dudley: I am going to object to this as hearsay, your Honor.

The Court: Well, I think the conversation between Steinberg and this witness is hearsay.

Q. (By Mr. McMurchie): Well, I will ask this question: Did you produce to Mr. Steinberg a purchaser for the assets of Coastal?

A. Yes. I brought Mr. Holm into San Francisco. I first took him to my office and equipped him with five or six large maps of all the Coastal holdings that I had bought from Hammon, Jensen & Wallen.

(Testimony of Alex E. Wilson.)

He explained to me what he could do in putting together the deal. He said he could sell to——

Mr. Dudley: This is hearsay, your Honor. I wish to object to that again.

The Court: Yes, again that is hearsay.

Q. (By Mr. McMurchie): Did you take Mr. Holm to see Mr. Steinberg?

A. Yes, I took Mr. Holm to see Mr. Steinberg, and Holm said he would buy 200,000,000 feet, and he said——

Mr. Dudley: Again this is hearsay.

Q. (By Mr. McMurchie): Did they enter into a contract?

A. They entered into a contract, yes, sir.

Q. Was all of the property resold first? [182]

A. All of the property was resold with about a \$2,000,000 profit before any money was put up at all.

Q. Did you work with Mr. Holm and Mr. Steinberg on this resale?

A. Day after day.

Q. Do you know who purchased besides Mr. Holm on this resale?

A. Yes, sir.

Q. Who were they?

A. The sales were—Holm took 250,000,000 feet, Hollister took 135,000,000 feet, Smith & Mores took 220,000,000 feet and then Hollow Tree and Malala Wood Products and Mr. Laird took the log deck and mill and part of the rolling stock. There was part of the rolling stock not yet sold.

Q. You were representing Coastal—what was

(Testimony of Alex E. Wilson.)

your interest in these resales, let me ask you that?

A. My interest was to aid the stockholders of Coastal to sell the deal. I had a \$200,000 commission coming on the 200,000,000 feet of Holm timber. I get a dollar a thousand for all the timber I sell. I have only received as small as 5 per cent once in my life.

I gave the \$200,000 commission away, I told Mr. Steinberg and I told Mr. Holm that I would sacrifice that so that the biggest price possible would be paid to the stockholders of Coastal, and at the same time the buyers would get as fine a deal as possible.

Q. Then you worked these resales in order to be able to produce a purchaser for the assets of Coastal, is that right?

A. As a broker I would have been entitled to a dollar a thousand commission on the whole 500,500,000 feet if I had not wanted to sacrifice it and make it possible for Mr. Stevenot to terminate this project. He hadn't been able to do it before.

Q. Now, did you have any agreement with Mr. Holm in regard to payment to him of any portion of your commission?

A. I told Mr. Holm that I wanted him to help put the thing together, he was the bell cow, is the word I used, and that I didn't want him to be out any money out of his pocket and I would protect him for his expenses in running around putting the rest of the deal together, with me and Mr. Steinberg's assistance.

(Testimony of Alex E. Wilson.)

Q. Did you ever agree with him to split your commission?

A. No, of course not. That would be illegal for me to do. I have been a broker for 33 years, I couldn't do that, I would lose my license and be fined. If Mr. Holm had a different understanding he is just mistaken about that.

Q. Did you ever reach a fixed figure as to what his expenses had been?

A. Never. I never thought what they might be, I knew they wouldn't be very much, because it didn't take very long to put these deals together.

Q. Was there any reason why the Coastal properties were not [184] sold directly to Mr. Holm and these other purchasers, Hollow Tree Lumber?

A. Yes, there definitely was. Mr. Stevenot didn't ever want to do that. He didn't want to sell anything separately, he wanted to sell the whole thing as a package.

The Court: He has testified to that already. I mean I don't want you to be covering the same ground again. He said that Mr. Stevenot would never agree to sell the property in any part, he always wanted to sell it as a whole.

Mr. McMurchie: Yes.

Q. Following these contracts for the resale of the assets of Coastal did the Sugarman's make an offer to purchase?

A. They first made an offer of \$3,750,000, and I told Mr. Steinberg when the offer came in, I said

(Testimony of Alex E. Wilson.)

“Well, that isn’t enough, we will have to get Sugarman to put up more money, because Mr. Stevenot always wanted four million”——

Mr. Olson: Same objection, your Honor.

The Court: Yes. The part that the Sugarman first made an offer of \$3,750,000 will stand. The rest will go out.

Q. (By Mr. McMurchie): You are referring now, Mr. Wilson, to Petitioner’s Exhibit No. 3, the letter of July 22nd, from Mr. Steinberg to Mr. Stevenot as Trustee for Coastal? A. Yes, sir.

Q. That letter was dated July 22 of 1953, was it not? A. That is true.

Q. And I believe Mr. Steinberg has testified that that [185] letter was delivered to Mr. Stevenot on that day? A. It was.

Q. Now did you receive a letter from Mr. Stevenot also dated July 22, 1953? A. I did.

Q. Is this the letter that you received from Mr. Stevenot? (Exhibiting document to witness.)

A. Yes, I received that on the 22nd day of July.

Mr. McMurchie: Petitioner’s next in order, your Honor.

The Court: All right, it will be admitted in evidence as Petitioner’s Exhibit 14.

(The document referred to was marked Petitioner’s Exhibit No. 14.)

The Court: That letter is annexed as an exhibit to some of the pleadings.

(Testimony of Alex E. Wilson.)

Mr. McMurchie: Yes, that is the one that is annexed to the Trustee's pleadings.

It is dated July 22, 1953.

"Dear Mr. Wilson:

"I wish to thank you for your letter of July 17th advising me of your current efforts to develop a plan of reorganization of Coastal Plywood & Timber Company.

"The plan of reorganization which I have filed with the Court has not yet been passed upon by Judge Lemmon and I will receive and consider any proposals which you may desire [186] to submit on behalf of your clients. Of course, any plan which you may submit should be of the nature contemplated by Chapter X of the Bankruptcy Act. Moreover, as I have previously advised you, neither I nor Coastal Plywood & Timber Company may be obligated for any commissions payable in connection with such a plan, and any such commissions must be paid by the investors for whom you act."

Mr. Wilson had you ever been notified by Mr. Stevenot in writing before that you would not obtain a commission from Coastal?

A. Never. That is when he really notified me, July 22.

Q. That is July 22, 1953? A. Yes, sir.

Q. And your testimony is that the offer of the Sugarman Company was delivered to Mr. Stevenot on the same day?

(Testimony of Alex E. Wilson.)

A. On the same day, and a copy of it delivered to me by Mr. Stevenot.

Mr. Dudley: Pardon me, counsel, did you say "in writing"?

Mr. McMurchie: I did.

Q. Did you talk to Mr. Sterling Carr about this letter?

A. When I received the letter in which Mr. Stevenot said he wouldn't pay me, in writing, I had received a copy of a letter from the Sugarman group that same morning. The Sugarman group also told me that they wouldn't pay me in that letter.

The Sugarman group had also delivered a copy of that same [187] letter to Mr. Stevenot that morning, so on the morning of the 22nd, Mr. Stevenot knew, but he didn't know that I knew, this is the first time he knew that I knew, they notified him on the morning of the 22nd when they put in their offer that they would not pay me.

The same afternoon of the 22nd, Mr. Stevenot wrote me that letter and he told me that he wouldn't pay me.

I was shocked, of course, because Mr. Carr had assured me and reassured me time and time again that Mr. Stevenot was a very decent fellow.

Mr. Dudley: Object to that as hearsay.

The Court: Carr?

Mr. Dudley: Yes.

The Court: The attorney for the Trustee? Are you claiming that a conversation between this wit-

(Testimony of Alex E. Wilson.)

ness and Mr. Carr, the Attorney for the Trustee, is a hearsay conversation?

Mr. Dudley: Yes, your Honor.

Mr. Olson: I think that is correct, your Honor.

Mr. McMurchie: Oh, absolutely not, your Honor.

Mr. Olson: I don't think Mr. Carr had any authority to speak for the Trustee.

The Court: He is representing the Trustee. He is an attorney at law, an agent of the Trustee.

Mr. Dudley: This is a conversation between Mr. Wilson and Mr. Carr.

The Court: Mr. Wilson and Mr. Carr, an agent for the [188] Trustee. Do you claim that is a hearsay conversation?

Mr. Olson: My objection, your Honor, is on the ground that a statement by Mr. Carr could not bind the Trustee.

The Court: That is another matter, but it may be notice to the Trustee through Mr. Carr. I don't say it is binding or anything of the sort, but it certainly has some aspect of notice, in the sense of giving information, and I am not going to rule that a conversation between the Attorney for the Trustee, who has had a long range of dealing in this matter, with this witness as well as Mr. Stevenot, is going to be hearsay in so far as the Trustee is concerned. I will overrule the objection on that basis and permit any conversation of that kind, but between Steinberg and Sugarman and so on, that is all hearsay.

(Testimony of Alex E. Wilson.)

Mr. Olson: I appreciate that.

The Court: I sustain an objection to that.

Q. (By Mr. McMurchie): Will you relate that conversation with Mr. Carr on the afternoon of July 22nd?

A. I took Mr. Stevenot's letter down to Mr. Carr's office and I said "Mr. Carr, I am shocked about this. I have here a letter from Mr. Stevenot, and you told me all the time he was a decent fellow and he would protect me, and you knew that he would, and here is a letter in which he now notifies me in writing that he won't pay me, and he is writing me that letter, he has already had the offer from the Sugarman's to buy," and I said, "I know, because Mr. Steinberg gave me a [189] copy of the letter this morning and he told me he had a copy of the letter from the Sugarman group that very morning in which they said that they wouldn't pay me."

I said, "I can't understand anything like that."

Mr. Carr said "I was never so shocked in all my life, I can't believe it, I can't believe that this is true." He said, "Alec, you go along just exactly the way you are going, don't say anything about it, because if Mr. Stevenot is going to treat you that way after you have raised all this money and sold this property, then the only thing you can do is seek refuge with the court, because, after all, Mr. Stevenot hasn't got any legal right to give you a contract. Mr. Stevenot hasn't any legal right to set

(Testimony of Alex E. Wilson.)

your fee, and you go right along, because you have been honest in this thing and you have worked hard and we needed this money so badly, and when the deal is closed, if he still doesn't pay you and you sue for it you can feel perfectly safe that the Courts of this state will treat you justly."

I said "Thank you very much."

And I have never told Mr. Stevenot until this moment that I knew that he had been notified in writing by Sugarmans that they wouldn't pay me. He went on for several months telling me, "Well, you get it from the buyer," and he knew all the time that he was notified. He was playing foxy with me.

Q. Mr. Wilson, do you feel that on July 22nd you had introduced to the seller, Coastal Plywood, the eventual purchaser of their [190] assets?

A. I brought together the buyer who was willing and able to purchase, and I had completed my transaction.

Q. You feel that on that day, on July 22nd, you had earned your commission?

A. That is all a real estate broker is required to accomplish.

Q. Following this letter of July 22nd to Mr. Stevenot did you have any conversation with Mr. Steinberg in regard to the commission?

A. Yes, on that same day.

Q. (By the Court): Did you have a conversation?
A. I had a conversation, yes, sir.

Q. (By Mr. McMurchie): Did you subsequently

(Testimony of Alex E. Wilson.)

reduce the substance of that conversation to writing? A. I did.

Q. Is that the document which has been introduced into evidence as Petitioner's Exhibit No. 4?

A. That is true.

Q. Did you understand that the \$25,000 specified—it is the letter of the 25th, your Honor, in which Mr. Steinberg agrees to pay Mr. Wilson \$25,000.

The Court: Yes.

Mr. McMurchie: That letter mentions the sum of \$25,000 to be paid to you by Mr. Steinberg. Did you ever have an agreement that that was to be in lieu of your Commission?

A. Of course not, that is only the expense account. The [191] 5 per cent commission on the \$4,500,000 deal is \$233,000.

Q. So that was strictly the expenses that you incurred? A. Yes, sir.

Q. And you estimate that those were the expenses which you had incurred to that date?

A. With my time and my expenses, yes, sir.

Q. Now this transaction was ultimately consummated, I believe, by approval of this Court on March 16th of 1954? A. That is true.

Q. Was that eventual purchase the result of a continuing negotiation between the Sugarmans and yourself?

A. Completely, completely, 100 per cent.

Q. Can you tell me what the established real estate broker's commission is on the sale of timber

(Testimony of Alex E. Wilson.)

lands? A. Timber is considered real estate.

The Court: Growing timber.

The Witness: Pardon me?

The Court: Growing timber.

The Witness: Yes, your Honor. The San Francisco Real Estate Association, which every small and large town in California copies their regulations, it calls for 5 per cent commission.

Q. (By Mr. McMurchie): Mr. Wilson, I show you a book which purports to be the San Francisco year book for the year 1954?

A. That is true, that is the San Francisco Real Estate Year Book for the year 1954. [192]

Q. Does that book list in it the real estate broker's commission established by the San Francisco Real Estate Board? A. Yes, sir.

Q. Does that list in it the percentage of commission payable to a broker upon the sale of real estate outside of the County of San Francisco?

A. Yes, sir.

Q. And what does it state in that respect?

A. 5 per cent.

Q. Can you tell me what the commission is upon the sale of personal property as established by the San Francisco Realty Board?

A. It is 10 per cent on the first \$50,000, and then 5 per cent on all sales over.

Q. Now, Mr. Wilson, can you testify from your own experience of 33 years as a real estate broker what the established commission is?

(Testimony of Alex E. Wilson.)

A. In my 33 years as a broker the commission has always been 5 per cent.

Q. Can you tell me what the total purchase price for all of the assets of Coastal was?

A. Yes, sir. It was \$4,452,275.

The Court: What is the necessity of going into that?

Mr. McMurchie: To establish reasonable compensation, your Honor, 5 per cent of the total purchase price.

The Court: Well, the total purchase price is already in [193] evidence. It is admitted, the record establishes that.

Mr. McMurchie: Yes, that is correct.

The Court: You are claiming a commission on that?

Mr. McMurchie: We are asking for reasonable compensation, which we believe is the established rate of compensation for a real estate broker. Of course, it is in the discretion of the Court. We are only indicating what the established rate is.

The Court: I am just indicating what the evidence is. If you feel it should be developed—it is getting past three o'clock. Are you about through with your direct examination?

Mr. McMurchie: Very close, your Honor. I have only a few more questions.

The Court: Well, conclude. I have another matter on the calendar, there is another case.

Q. (By Mr. McMurchie): Mr. Wilson, is there

(Testimony of Alex E. Wilson.)

any personal property included in the sale of these assets of Coastal?

A. Yes, there was the mill and the log deck and the lumber in the yard and the rolling stock. I think it is on the books for the company for about two million dollars.

Q. About two million dollars of personal property? A. Yes, sir.

Q. Do you feel that your services in this matter have been of benefit to the estate, the stockholders and the creditors? [194]

A. I think they saved the stockholders and all concerned from complete bankruptcy.

Q. And you are asking this Court that you be allowed a reasonable compensation for your services as real estate broker? A. I am, sir.

Mr. McMurchie: I think that is all, your Honor.

The Court: All right. Then in so far as this case is concerned we will take a brief recess. I have some matters that I want to hear, some criminal matters, before the Court will be at recess, so if you will just remain in the court room. You may step down.

(The Court thereupon took up another matter.)

(Recess.)

Mr. McMurchie: You may cross examine.

Cross Examination

Q. (By Mr. Olson): Mr. Wilson, you first met Mr. Stevenot, the Trustee, in July of 1952, is that

(Testimony of Alex E. Wilson.)

correct? A. That is true.

Q. And not August, as alleged in your petition?

A. It was in July, because I found a letter in July which I wrote to him, so I met him in July of 1952.

Q. And you went to Mr. Stevenot's office because you heard he had some timber contracts he was unable to take advantage of, didn't you?

A. No, I went to his office because Mr. Carr told me to go [195] down there and try to sell this Coastal Plywood Company for Mr. Stevenot.

Q. Mr. Carr had told you that Coastal had some timber contracts, timber cutting contracts that it was unable to take advantage of?

A. That is right, for me to go down and see if Mr. Stevenot didn't want me to sell them.

Q. And you then had a purchaser who was interested in buying these cutting contracts, is that right? A. Pardon me, sir.

Q. You had a purchaser who was interested in buying these cutting contracts, did you not?

A. I didn't right then. It took me about three months to find a purchaser for plywood. I didn't have a purchaser when I went down there.

Q. Now at this meeting in July, 1952 when you called upon Mr. Stevenot, the Trustee——

A. Yes.

Q. The Trustee told you that he had been negotiating with the land owners in an attempt to obtain an amendment to those contracts, did he not?

A. I don't recall. Maybe he did.

(Testimony of Alex E. Wilson.)

Q. Didn't he also tell you that he was endeavoring to get the rights of way necessary to take advantage of those contracts?

A. Yes, he told me that, but he wasn't able to do it. [196]

Q. But he was still negotiating, was he not?

A. Yes, he said he was trying to do something about it.

Q. And he told you, did he not, that he had offered the landowners, subject to court approval, to release them from the contracts if they would pay the debtor the sum of \$100,000?

A. Ask that question again, please.

Q. The Trustee told you when you called upon him in July of 1952, did he not, that he had offered to the land owners to release them from the contracts if they would pay the debtor a hundred thousand dollars?

A. No, he never told me that. Of course not.

Q. Where did you obtain the figure of \$100,000?

A. I got the figure from Mr. Stevenot, time and time again, I got it from Mr. Stevenot.

Q. Didn't the Trustee tell you he was negotiating with the Rickards, that is, with the land owners, for the sale or release of the contracts to them?

A. No, he told me at all times that he wanted to sell those contracts, and it was very, very important, and I went on and sold them, after three months work on them.

Q. But he did tell you he was trying to negotiate

(Testimony of Alex E. Wilson.)

changes in the contracts that would permit him to take advantage——

A. I don't know whether he told me that or not. He made no changes in the contracts. The contracts as I sold them were the same as when Coastal got them.

Q. He told you that he was having no success in negotiating [197] those changes, did he not?

A. I don't think he discussed those changes with me. I knew he had no changes.

Q. Do you deny, Mr. Wilson, that the Trustee told you he would not employ any broker to sell those contracts? A. Ask that question again.

Q. Do you deny that the trustee told you at this first meeting that he would not employ any broker to sell those contracts?

A. I don't know what he said to other brokers. He said for me to go out and sell them. I wasn't interested in what he would do with other brokers. I went down there to sell them myself.

Q. He did tell you that he wouldn't pay any commission on the sale of those contracts?

A. Oh, he always said that, but he always paid me, in the final analysis he paid me \$5,000. I kept telling him that he couldn't do otherwise, and Clarence Nielson, who I sold it to, wouldn't pay 5 cents commission. If I had talked \$5,000 to Clarence Nielson he would have given Mr. Stevenot an offer for \$95,000. He wasn't paying anybody any commission.

Q. You knew, Mr. Wilson, did you not, that Mr.

(Testimony of Alex E. Wilson.)

Stevenot was a trustee in reorganization proceedings under the Bankruptcy Act?

A. Of course I knew that.

Q. And he was appointed by the Court?

A. Yes, sir.

Q. And he was subject to the control of the Court at all [198] times? A. That is true.

Q. And you were told by the Trustee, were you not, that he couldn't employ a broker without going to the Court for approval?

A. He employed me, he told me to go ahead. He gave me no contract——

The Court: He wants to know if he said that.

A. Oh. No, he didn't tell me he couldn't employ me. He told me to proceed.

Q. (By Mr. Olson): Is it your testimony that after this first meeting with the trustee you contacted various persons in an effort to sell these contracts?

A. Not only did I contact prospective purchasers, I put ads immediately in the San Francisco Examiner and the Portland Oregonian.

Q. And you eventually contacted a Mr. Clarence Nielson, who ultimately bought those contracts?

A. That is true.

Q. When did you first contact Mr. Nielson?

A. I don't know exactly. I met Mr. Stevenot first in, we will say, July—it was July, '52, July, August, September—I closed the Nielson deal in October—I must have contacted Mr.—I don't know the date. Some place after I first met Mr. Stevenot.

(Testimony of Alex E. Wilson.)

Q. Did you contact him after you had contacted all of these [199] other people to whom you tried to sell the contracts?

A. Oh, I was working on everybody. I just happened to get hold of Mr. Nielson and I finally sold him the contracts.

Q. Well, when did you first actually start negotiating with Mr. Nielson for the purchase of the contracts by him?

A. I don't remember. It must have been——

Q. Was it August or July?

A. I remember I first met Mr. Stevenot in July. August, September or October, somewhere in those three months. I couldn't tell the first date. I haven't my file with me. I have a hundred letters from Clarence Nielson. If I had it here I could probably find the letter, the first one.

Q. You didn't contact Mr. Nielson until after the first time you came to the trustee's office in July of '52, is that right?

A. I don't get your question, what?

Q. Did you contact Mr. Nielson before you came to the trustee's office for the first time in July of 1952?

A. I don't think so. I think I contacted Clarence Nielson after Mr. Stevenot told me to proceed.

Q. Was it several weeks after or——

A. Oh, I don't know, it might have been a couple of months. I can't give you the date.

Q. Not within one week, though?

A. I couldn't tell you. Might have been. I

(Testimony of Alex E. Wilson.)

forget when I [200] first contacted him about it. I couldn't give you that date.

Q. I will show you a letter Mr. Wilson, dated July 9, 1952, and ask you if that is your signature to that letter?

A. Yes, that is right, that is July 9th, so I evidently contacted him before July 9th.

Q. You had contacted Mr. Nielson before?

A. Probably did, if that date is correct on there.

Mr. Olson: I will offer this in evidence on behalf of the trustee, your Honor.

The Court: All right, it will be Trustee's Exhibit A.

(The document referred to was marked Trustee's Exhibit A.)

Mr. Olson: This is a letter on the letterhead of Alex E. Wilson, dated 9 July, 1952, addressed to Mr. F. G. Stevenot, and it states:

"Dear Mr. Stevenot:

"I am progressing in good shape toward selling the timber properties we have discussed.

"Mr. Nielson (Clarence L. Nielson) was called out of town but will be back Friday. He is my prospective purchaser, as I told you.

"Rechecking, I have found that he banks at the Bank of America, Santa Cruz.

"If you are in town Friday I shall phone you.

"Yours truly,

"Alex E. Wilson."

Q. Mr. Nielson had purchased the land over

(Testimony of Alex E. Wilson.)

which the debtor [201] needed a right of way to take advantage of these cutting contracts, is that right?

A. Mr. Nielson had bought the Y Ranch from Mr. Switzer, Senior.

The Court: Is that the one that had the right of way across it?

A. That is the one that had the right of way, yes, sir.

Q. (By Mr. Olson): When did he purchase that land?

A. I don't know when Mr. Nielson purchased it. He purchased it some time before I contacted him. He then owned it. I couldn't tell you the date.

Q. Have you ever represented Mr. Nielson in any transaction? A. Never before, no, sir.

Q. Mr. Nielson was your client, was he not?

A. He was my client, and I started to sell him the Coastal properties, but never before that. I never knew him before that.

Q. Now this petitioner's exhibit 1, this was the offer which Mr. Nielson submitted to the Trustee to purchase these cutting contracts.

A. August 19th?

Q. Is that the offer which Mr. Nielson submitted to the Trustee to buy those contracts?

A. That is the offer he submitted, and I wrote that for him in my office and sent it down to Mr. Stevenot.

Q. That offer was conditional upon Mr. Nielson being able to negotiate certain changes in the Cut-

(Testimony of Alex E. Wilson.)

ting contracts? [202] A. That is true.

Q. Is it your testimony that this offer was then submitted by the Trustee to the Court?

A. I believe he submitted it. The deal was finally closed.

Q. As a matter of fact, Mr. Nielson was unable to negotiate those changes in the cutting contracts?

A. None of those changes were negotiated, but Mr. Nielson then went through with the deal without any changes, because Mr. Stevenot assured me, and assured Mr. Nielson that none of the clauses therein were damaging, and Clarence Nielson made up his mind to go through with the deal as the contracts were.

Q. Exactly what changes did Mr. Nielson want to negotiate in those contracts?

A. No. 1, the contracts—there were 67,000,000 feet of timber. Under the contract all of the timber had to be removed from the land by 1956, an impossible feat.

The contract called for, if that were not done, the contract was terminated and the land owner got the land back and all the moneys paid in before that time would go as liquidated damages.

And No. 2, a very foolish clause, stated that all the land must be cleared. It didn't say that logging shall be done according to State and Federal Laws. So Switzer and Rickard, they contended that the land must be swept out clear. No. 3, when Mr. Switzer sold Mr. Nielson the Y Ranch, he kept the right [203] of way of the road through the

(Testimony of Alex E. Wilson.)

ranch that goes down into the Rickard property and he couldn't get the Rickard timber out of there without that right of way, and Mr. Switzer wouldn't give it up, never did give it up until we changed the contracts here about a month ago.

Q. What efforts were made by Mr. Nielson to negotiate those changes at the time this offer was submitted, or shortly after that?

A. After he bought it?

Q. After this offer, this letter offer was submitted to the Trustee?

A. We didn't make any great effort to change that, because Mr. Stevenot said he didn't think there was anything that would stop us, that according to the clearing clause the Court would probably hold that you cleared the land according to the custom of the District, and I believed that myself. The other clause on the right of way, Switzer gave us some little indication that he might do something if we gave him a little bit more money per thousand board feet and changed the contract.

As far as getting the timber off, at that time we had three seasons to do it. It was in 1952—3, 4, 5, 6—we had three full seasons and a half, and I felt sure and so did Mr. Nielson that if we continued we would have no trouble in taking the 67,000,000 feet off in three seasons and a half.

Q. You did make some effort to negotiate changes?

A. We made a gesture, no great effort at all, just a small [204] gesture.

(Testimony of Alex E. Wilson.)

Q. Didn't contact the land owner?

A. I didn't contact one of them, before Nielson bought the property.

Q. As a matter of fact, Mr. Nielson subsequently presented a new offer to the Trustee, did he not, to buy those contracts?

A. No, he didn't present a new offer, it was always a hundred thousand dollars, he didn't have the money, and I went down to the **Bank of America**, the main branch, and saw Mr. Myers, the Manager of the Branch, and Mr. Micheletti, the General Manager, I even went to see Mr. Boise, the Vice President, who had charge of this \$1,000,000 loan the bank has, and they gave me a letter to the Manager of the Bank of America down in Santa Cruz, Mr. Nielson's bank.

We went back down there, and then we came back on two or three occasions to the main branch of the Bank of America, and finally Mr. Micheletti ended up handling the loan, and he said "Mr. Wilson, we are going to give Clarence Nielson this \$100,000 to buy the contracts," and the Bank of America did loan Mr. Nielson \$100,000.

Q. I will show you what purports to be a duplicate of a letter dated October 11, 1952 from Clarence L. Nielson and Amy K. Nielson to Fred G. Stevenot, Trustee, and ask you whether you have ever seen that document before?

A. No, I don't think I ever saw this before, but this calls for the same deal, a hundred thousand dollars, signed by [205] Clarence Nielson and Amy

(Testimony of Alex E. Wilson.)

Nielson. I suppose this was prepared by you and I suppose you had them sign it. That is for \$100,000 for the contract.

Q. You have never seen that letter before?

A. No, I don't think I have seen this.

Q. Do you recall having a conversation with the Trustee, Mr. and Mrs. Nielson, the Trustee's counsel, Mr. Carr, and myself, regarding this subsequent letter of October 11, 1952?

A. We had several discussions with Mr. Stevenot. Mr. and Mrs. Nielson were up in his office several times discussing this deal.

Q. Do you recall a conversation on October 11th or October 12th, 1952?

A. I wouldn't remember the date. I couldn't tell if I had a discussion or not.

Q. Do you recall a meeting in which the Trustee objected strenuously to Mr. Nielson putting in his offer a condition that the Trustee pay \$5,000 of the \$100,000—

A. Why, of course not, that discussion never took place. If that discussion had taken place Mr. Nielson would have never taken that property. He would have said "I will pay \$95,000 for it." Mr. Nielson never thought of such a thing as paying a commission.

Q. Mr. Nielson refused to put more than \$100,000 into this deal, is that correct?

A. Why, of course. He was very sorry he put that \$100,000 [206] after he got in there. It was a contract that nobody could possibly operate. We

(Testimony of Alex E. Wilson.)

had to change all of them. Last month we changed them all, and Nielson is paying now instead of \$2.00 a thousand which the contracts were, he is now paying \$6.00 for the fir, \$12.00 for the redwood, and \$18.00 for the sugar pine. That is the kind of a deal he had. He couldn't operate under the contracts. I had all the contracts changed, and the Rickards and all of them have given him 10 years to cut it off, not 2 years, but 10 years.

Q. You helped Mr. Nielson negotiate these changes in the contracts, is that right?

A. Yes, sir.

Q. Recently?

A. They were changed about two months ago. Aaron Cohn was employed as a lawyer, he did most of the work.

Q. In fact, Mr. Aaron Cohn was Mr. Nielson's lawyer at the time this sale was made, was he not, the sale of the cutting contracts by the debtor to Mr. Nielson and his wife?

A. Yes. I secured Aaron Cohn for him as his lawyer. I secured Mr. Cohn for him.

Q. And Mr. Nielson was in a hurry to close this sale of the cutting contracts, was he not, because Mr. Cohn was going to file certain quiet title actions?

A. We were in a hurry to close it, Mr. Olson, because the time was so limited. Even then we only had three years and one half, and Mr. Nielson wanted to hold the property for [207] six months so he could take a capital gain before he really

(Testimony of Alex E. Wilson.)

made a resale, so that would only give three years to get out 67,000,000 feet of timber, so we were really in a hurry to close it if we were going to close it.

Q. You obtained a loan from the Bank of America for Mr. Nielson in order that he could make this purchase?

A. Of \$100,000, yes, sir.

Q. Now this sale to Mr. and Mrs. Nielson was not consummated until after the Court had approved it, is that right?

A. It was approved up in this Court by Judge Lemmon. I was present at the time with Mr. and Mrs. Nielson.

Q. And at the hearing and in the Trustee's Petition all of the facts, including the \$5,000 which you were to receive, were presented to the Court, were they not?

A. That is true.

Q. And the sale was not consummated until after it had been approved by the court and all the facts——

A. It was approved that day, Judge Lemmon approved the entire transaction that day.

Q. Now, after the sale of these contracts can you state approximately when you first went back to see the Trustee?

A. Oh, I suppose I was back there immediately. I worked with him continually. It must have been a few days, something of that matter.

Q. Did you then indicate to the Trustee that you

(Testimony of Alex E. Wilson.)

were working on a possible sale of the other assets of the debtor? [208]

A. I didn't have to discuss it, he asked me to sell them. He said it was very important, he was tired, he wanted to get out of the whole thing, they needed money badly, and he wanted me to sell them.

Q. Isn't it a fact, Mr. Wilson, that the Trustee told you that he wasn't interested in a sale of the debtor's property at that time, he wanted to save the debtor's business for the stockholders?

A. Why, of course not.

Q. He never told you that?

A. Oh, of course not. Mr. Carr also told me that the place had to be sold, so did Mr. Stevenot, gave me every assistance in the world, gave me maps, I kept going immediately, went over three states to sell it continuously for eleven months.

Q. You deny that he ever told you that he was not interested in a sale of all of the assets during 1952 or 1953?

A. Why, of course not, he wanted to sell it all the time.

The Court: Did I understand your question that he was not interested in the sale?

Mr. Olson: In an outright sale of the assets, but was interested in preserving the business for the stockholders.

The Court: The witness understood the question?

A. Yes, sir.

Q. (By Mr. Olson): Do you deny that the Trus-

(Testimony of Alex E. Wilson.)

tee told you that if you worked on any proposal that you must act for the proponent, get your compensation from the proponent? [209]

A. Oh, Mr. Stevenot told me that all the time. He told me that with the Nielson deal, he never wanted to pay me—he said, “I don’t want to pay you, I don’t want to go before the Court.”

Mr. Carr, of course, told me all the time, “You don’t have to pay any attention to that because after all he has no authority to pay you, he hasn’t any authority to give you a contract.” He says, “We want to sell it and he wants to sell it, and I am going to see that the stockholders get dollar for dollar, and you will have to bring in—Alex, you will have to bring in an offer where the stockholders are going to be protected, that is what I am mostly interested in, and everyone else, and then we can sell it.”

But he said, “If Mr. Stevenot takes this position that he won’t pay you, then you must appeal to the Court. That is your refuge, and you will be treated honestly if you complete the deal and save this institution.”

Q. Mr. Carr told you that the Trustee had no power to employ you?

A. Yes, definitely.

Q. Nor any power to pay you?

A. He said that was up to the Court. The Court would set my fee.

Q. He told you if the Court had to approve any employment?

(Testimony of Alex E. Wilson.)

A. He said the Court would set my fee and be honest with me. [210]

Q. Now, when Mr. Stevenot told you that you would have to seek any compensation from the people for whom you submitted a proposal you fully understood that, didn't you?

A. No, I didn't understand it, because he told me the same story on the first deal, on the Nielson deal, and then he paid me. In the final analysis he paid me. On the second deal he told me the same story, but at the same time for seven months he had a letter from the buyers stating that they wouldn't pay me. So I knew that he wasn't going to pay me and I knew that he knew the buyers weren't going to pay me. I knew that he was playing a double game there.

Q. He told you commencing in 1952 and on several subsequent occasions continuing throughout 1953 that neither he nor the debtor would pay you then any commission on any sale you might bring in?

A. He always told me that, but when I finally sold the Rickard he paid me, irrespective of his statement, he paid me. And I went to Mr. Carr about the Garcia. I was afraid of the situation, and time after time I told Mr. Carr, I said, "Mr. Stevenot continues to tell me that he wants me to get my commission from the buyer," and Mr. Carr told me, "He is an honorable man, he will pay you."

Q. Did you ever tell Mr. Stevenot about these conversations with Mr. Carr?

(Testimony of Alex E. Wilson.)

A. Why, of course not. [211]

Q. You knew, did you not, that it was a condition of Mr. Nielson's offer to buy these cutting contracts that Coastal pay you \$5,000?

A. Coastal agreed to pay me \$5,000, and did pay me.

Q. It was a condition in the offer submitted by Mr. Nielson?

A. It was no condition in the offer at all. The offer of Mr. Nielson, Mr. Nielson \$100,000 period, and that was paid to Coastal and Coastal paid me a \$5,000 brokerage.

The Court: Just a moment. Didn't you testify before that Mr. Nielson made a demand that \$5,000 be paid to you by Coastal?

A. Your Honor, sir, there was never a mention by me to Clarence Nielson about a commission. I kept away from that because I knew Clarence Nielson very well after the weeks I had worked with him, and I knew that if a commission was ever mentioned that Clarence Nielson would never go through with that deal, and Clarence never knew that I got that \$5,000 until after the papers were out.

He even spoke to me about it, he said, "Alec, I didn't know that you were getting a \$5,000 commission. If I had know that, by gosh I would only have offered \$95,000." He said, "I would have made up the commission to you on the resale of the timber to me."

Clarence would never have gone through with that deal if he knew about the commission. [212]

(Testimony of Alex E. Wilson.)

I wasn't doing anything wrong, because I was entitled to a commission. I am a broker. That is the way I make my living.

Q. (By Mr. *McMurchie*): Did you ever resell any of this timber for Mr. Nielson? A. No.

Q. Now, in July 22, 1953, I think you testified that you received this letter from the trustee which constitutes Petitioner's Exhibit 14, is that correct?

A. Yes, sir, that is true.

Q. You received that letter on July 22, 1953?

A. That is true.

Q. That is the only letter you have ever received from the trustee, is that correct?

A. That is the only letter I ever received from him, and in that letter he tells me that he won't pay me, but of course three hours before he wrote that letter he received a letter from my clients stating that they wouldn't pay me.

Q. How do you know that?

A. I know it, because Mr. Steinberg came in person and delivered me a copy of that letter and I went right over in person two blocks away and delivered the other copy to Mr. Stevenot and he told me that he did it.

Q. How did you receive this letter?

A. I have forgotten whether I got that in the mail or whether [213] that was left on my desk in my office.

Q. But you know you didn't get it until the afternoon of July 22nd?

A. I know it was written on the 22nd of July.

(Testimony of Alex E. Wilson.)

Q. It could just as well have been delivered on the morning of July 22nd, couldn't it?

A. No, it was afterwards, because I was so shocked when I got it, because in the morning I had received Mr. Steinberg's and the Sugarman letter stating they wouldn't pay me and with their offer, and so in the afternoon Mr. Stevenot gets busy and he tells me he won't pay me, after he has taken my client's offer and after he has the deal in his pocket because of me, so he puts me in between.

Q. Mr. Stevenot had told you over and over again during the previous month that he wouldn't pay you a commission?

A. He always did that, but he always paid me.

Q. He told you orally and in this letter he puts in writing?

A. Then he puts it in writing after he receives a letter from the Sugarman's that they weren't going to pay me, so he knew then that nobody would pay me, so he felt very happy about it, I assume.

Q. He simply told you in this letter what he had previously on many occasions told you verbally?

A. Yes, but he already had a letter, he knew that the buyers were not going to pay me, because three hours or four hours [214] before he had a letter from them, which makes it quite different, doesn't it, Mr. Olson?

The Court: Mr. Wilson, don't argue with Mr. Olson.

A. Excuse me, your Honor.

Q. (By Mr. Olson): But he did tell you ver-

(Testimony of Alex E. Wilson.)

bally on many prior occasions, going back to 1952, he wouldn't pay you any commission, when the Sugarman Lumber Company wasn't even in the picture, were they?

A. He didn't say he wouldn't pay me, he said he didn't want to pay me, that he didn't wish to go before the Court and ask for another fee, he didn't like to do that, he said, because he had large fees to pay, and he didn't want to go and ask for more fees.

The Court: But he said first——

A. He said that I should get my commission, yes, sir, that is true, that he wanted me to get my commission from the buyer.

Q. (By Mr. Olson): Now, when you testified, Mr. Wilson, that you had no definite understanding regarding commission until July 22, 1953, you were referring to this letter, were you not?

A. Yes, that is true.

Q. Now, you know, do you not, that Mr. Stevenot, the trustee, turned down that offer he received from Mr. Steinberg on July 22, 1953?

A. Oh, yes, I know that, and I told Steinberg and he told Sugarman on the phone from his office he would have to pay more [215] money, and Sugarman said that he was going to put in another offer. That was just the first offer.

Q. Mr. Stevenot turned it down completely?

A. Oh, yes. It was only for \$3,750,000. I told Steinberg and Margolis that they couldn't get it for that.

(Testimony of Alex E. Wilson.)

Q. You also knew, did you not, Mr. Wilson, that the trustee in June of 1953, that is the preceding month, had filed his first plan of reorganization with the Court, did you not?

A. I didn't know whether he did or not. He never told me about it.

Q. Did you know that the trustee ever filed a plan of reorganization prior to the one involving the Sugarman plan?

A. I didn't know anything about it. I was never informed about what Mr. Stevenot was doing. All I was trying to do was sell the timber and report every day about my actions to Mr. Stevenot.

Q. You knew that Mr. Stevenot, the trustee, was having difficulty in getting the RFC to go along with the plan of reorganization on which he was working, did you not?

A. You mean on the sale to Mr. Sugarman?

Q. No, I am speaking of the plan of reorganization.

A. No, I knew nothing about the plan of reorganization, I couldn't tell you a thing about it, Mr. Olson. Mr. Stevenot never told me a thing about it. I am not a lawyer, I don't know a thing about it. He never discussed it with me. In fact, [216] I don't know what you are referring to.

Q. I refer you to Paragraph 8 of this Petition, Mr. Wilson, which states that during this period a first plan of reorganization of the above-named corporation was pending before this Court, which plan proposed the continuation of the business of

(Testimony of Alex E. Wilson.)

Coastal Plywood & Timber Company. You had no knowledge at all regarding that plan?

A. No, I never knew anything about the plan of reorganization. Mr. Stevenot asked me to sell the timber when I first came in there, and I kept trying to sell the timber. That was my job.

Q. You had no knowledge of this allegation in your Petition regarding this first plan of reorganization?

A. No. I had my lawyer put that in there from the legal standpoint. I don't know anything about it.

Q. You read this, did you not?

A. Certainly, I read it.

Q. And did you also verify it?

The Court: Yes, he verified it.

Q. (By Mr. Olson): Well, did you know that during the months of July and August, 1953 the trustee was trying to obtain the consent of the RFC?

Mr. McMurchie: Mr. Olson, are you talking about whether Mr. Wilson knew when he filed this Petition the first plan was pending or whether he knew it back in July, 1953?

Mr. Olson: I believe Mr. Wilson said he never knew anything [217] about it.

The Court: Yes, that is right, he said he didn't know anything about it.

Q. (By Mr. Olson): Then you knew nothing about Mr. Stevenot's attempt to negotiate with the RFC another plan of reorganization?

(Testimony of Alex E. Wilson.)

A. When you say reorganization, you mean selling to Sugarman?

Q. No.

A. I don't know anything about his business as trustee, he never discussed that with me. He just told me to try to sell the timber and that is what I kept trying to do. I didn't know anything about it.

Q. Now, Mr. Wilson, you testified regarding contact with various people regarding a possible sale of the assets of Coastal Plywood & Timber Company? A. Yes, sir.

Q. None of those people ever purchased any assets of the debtor or participated in the trustee's plan involving the sale to Sugarman Lumber Company, did they?

A. I never got anyone to buy anything until I got hold of the Sugarman crowd.

Q. When you took some of these people over this property did you first get permission from the trustee or from the—company?

A. Oh, I had the permission of the trustee always. I told Mr. [218] Stevenot at the times I went to take people, he said certainly. Of course, I had to do that to show them the timber.

Q. Now, in your Petition you allege you submitted to William Steinberg a proposal for the purchase of the debtor's assets. This was in April, 1953, is that correct? A. April, 1953, yes.

Q. Exactly what was this proposal that you submitted to Mr. Steinberg?

A. Oh, the proposal, it is not a legal proposal,

(Testimony of Alex E. Wilson.)

it is like every broker proposes. I would say, "Mr. Steinberg, Mr. Stevenot has told me to get \$4,000,000, here is the report, here is how much timber there is. If your clients want to make a deal let's start in on it."

That is the way you sell timber.

I don't know what you mean by a proposal.

Q. I am merely taking the language from your Petition, Mr. Wilson.

A. Well, that is the language that my lawyer—that is the language of my lawyer. You are a lawyer. You know how these petitions are made.

Q. Now, I believe you testified you supplied to Mr. Steinberg the various information given in Petitioner's Exhibit 13, is that correct?

A. That is true.

Q. Is it also your testimony, that all of those items were compiled [219] by the trustee?

A. Everything that I received outside of the maps that I had made by Hammon, Jensen & Wallen were given to me by Mr. Stevenot, everything except the maps from Hammon, Jensen & Wallen, which I paid for myself.

Q. Does that include this letter from Speckert Lumber Company?

A. Oh, of course not, let me explain that. I didn't see that.

Q. Well, look at it again.

A. Well, we will read them over.

Detailed inventory. That was given to me by Mr. Stevenot.

(Testimony of Alex E. Wilson.)

Letter from Speckert Lumber Company stating they will take this sugar pine from Coastal at \$60 a thousand. No, I gave that to Mr. Steinberg and Mr. Sugarman because there is about 7 per cent of sugar pine on this Garcia Tract. There are very few mills in California that can cure sugar pine properly.

Q. If your Honor please, I think we are consuming time. Will you designate which items were supplied by the trustee?

A. The detailed inventory was given to me by Mr. Stevenot.

Total cruise of Coastal Plywood Timber was given to me by Mr. Stevenot.

Coastal report of trustee. That was given to me by Mr. Stevenot.

Property map of Coastal Plywood Company, showing location of timber. That was given to me by Mr. Stevenot. [220]

Q. Wasn't that a map that you got from Hammon, Jensen & Wallen?

A. Oh, no, Mr. Stevenot gave me a very beautiful map which was colored. I later gave it back to him. The maps from Hammon, Jensen & Wallen were not colored.

Q. The other three or four items out of the total of seven were obtained by you, not supplied by the trustee?

A. They were obtained by me at great expense, because the Sugarman Company demanded that I sell all the sugar pine for them too before they put

(Testimony of Alex E. Wilson.)

the money up. That is the letter from Mr. Speckert after I went to Marysville and took him over the property for three days, and he guaranteed to buy all the sugar pine at \$60 a thousand delivered in the pond.

The other article there is—the financial report of Mr. Holm, Mr. Sugarman phoned Mr. Steinberg, and he said, “Well, Mr. Holm will buy this timber, so said Wilson. Let’s have the financial report from him.”

So I went over and got a financial report from Mr. Holm.

Q. Those were items not supplied by the trustee? A. Oh, those two obviously were not.

Q. Now, shortly after the trustee refused this offer of July 22 from Mr. Steinberg, you called upon the trustee, did you not, to find out whether he had received such offer?

A. I suppose I did. I called on him practically every day I was in San Francisco when this deal was on, trying to keep track of it, because I called on the 22nd when I got the letter [221] from Mr. Stevenot that he wasn’t going to pay me, I would like to have sat in on those meetings, but Mr. Stevenot never would call me on those meetings. I suppose he thought he would have to pay me then.

Q. You called upon Mr. Stevenot on July 22nd?

A. No, I don’t whether I did or not.

Q. Now, during one of those calls shortly after the submission of that offer by Mr. Steinberg the

(Testimony of Alex E. Wilson.)

trustee asked you, did he not, whether Mr. Steinberg had agreed to compensate you?

A. He asked me about commission, and I said, "No, I can't get any commission," because you see Mr. Stevenot at that time didn't know that I knew that he had a letter saying they weren't going to pay me, but I knew that.

I also had his letter that he wasn't going to pay me, and I said, "I have a letter from Mr. Steinberg, I think he feels sorry for me, he is going to give me \$25,000 to cover my expenses if he gets paid."

I told Mr. Stevenot that, because I thought maybe he might break down and say, "Well, I am going to pay you your brokerage fee."

Q. You simply told him that Mr. Steinberg agreed to pay you \$25,000, isn't that right?

A. Oh, no, of course not. You don't think \$25,000 is the commission on a \$4,500,000 deal, do you, Mr. Olson? [222]

The Court: Don't argue with counsel.

Q. Oh, pardon me, excuse me, excuse me, your Honor.

The Court: As a matter of fact, it is not important what Mr. Olson thinks. What is important is what I think.

Q. (By Mr. Olson): Now, during 1953, Mr. Wilson, did you ever meet any of the officers of the J. J. Sugarman Co.?

A. I never met any of the officers of J. J. Sugarman Co. because on the 22nd day of July when I

(Testimony of Alex E. Wilson.)

got that letter from the Sugarman Company that they wouldn't pay me and on the same day I got a letter from Mr. Stevenot that he wouldn't pay me, I went back to Mr. Steinberg's office and I called Mr. Sugarman on the telephone in Los Angeles and I said, "Mr. Sugarman, did you ever have an understanding with anybody that you were going to pay me a commission on this deal?"

He said, "Of course not, I am not going to pay you, we are not going to pay anyone a commission. We are buying this property, we are not selling it." He said, I will tell you, Coastal will pay you, if anybody. I suggest you call him up and see what he thinks."

I called Mr. Margolis up on the telephone at the Fairmont Hotel and I told him what Mr. Sugarman said, and Mr. Margolis said, "I feel the same way. We are buying the property, we are not selling" and he hung the telephone up in my ear.

After that, when the negotiations were going on, they never called me into those meetings. [223]

Q. When was this that you contacted Mr. Sugarman and Mr. Margolis?

A. That was either on the 21st day of July when I received those letters that I wouldn't be paid or a day or so later. Those telephone calls were made from Mr. Steinberg's office in San Francisco with Mr. Steinberg present.

Q. Now, did you know that when the Trustee turned down Mr. Steinberg's offer the J. J. Sugar-

(Testimony of Alex E. Wilson.)

man Co. lost interest and dropped out of the picture?

A. Yes, I knew all about it, because I met time after time with Mr. Jamison and his son and worked day after day with them trying to get them to take it.

Q. You knew that Mr. Steinberg was representing Mr. Jamison from August until October?

A. I knew he was associated with him in some way, I didn't know whether he was representing him or what he was doing. I was trying to sell the timber to him. I don't know what his position was, but I met with him many many times.

Q. You introduced Mr. Steinberg to Mr. Fred Holm, is that correct? A. That is true.

Q. When was that?

A. Oh, let me see. I might get it here. I think it was in June, 1953. I believe that was the date, some time in June.

Q. Is Mr. Holm one of your clients? [224]

A. I had first tried to sell him the Rickard Tract.

The Court: No, is he one of your clients? Do you want to know now?

Mr. Olson: No, was he one of your clients when you introduced him to Mr. Steinberg?

A. Yes, he was one of my clients. I hadn't yet succeeded in selling him anything, but he was one of my potential buyers.

Q. Mr. Holm wanted to buy one portion of the timber owned by the debtor, did he not?

(Testimony of Alex E. Wilson.)

A. Yes sir, he wanted to buy Unit No. 2, 200,000,000 feet.

Q. You relayed that fact to Mr. Steinberg, is that correct? A. I told him that.

Q. And not to the trustee?

A. No, I didn't say anything to the trustee about it. There was no need for my telling the trustee.

Q. How much timber was there in Unit 2?

A. Well, I think about 1,153,000, to be exact, 1,153,000.

Q. Mr. Holm was originally willing to pay \$9 a thousand for that timber, was he not?

A. He would pay \$9 with the land with some additional property that he wanted, something on the coast, some additional little property. I have forgotten what they were.

Q. Was this while Mr. Steinberg was representing Mr. Jamison?

A. I don't know if that was the same——

Q. During what period did Mr. Holm, at what time did Mr. Holm [225] first offer to buy this Unit 2?

A. I don't remember. I have a letter that I have introduced in evidence where Mr. Holm is first writing to me. That would be the date. I have the letter here, and I can't place it, it is confusing, all these dates, but there is a letter in evidence from Mr. Holm where he first makes me the offer. I don't know what date that is.

Q. You and Mr. Steinberg were going to sell this

(Testimony of Alex E. Wilson.)

Unit 2 to Mr. Jamison, were you not, at a price of \$8 a thousand?

A. Oh no, we were going to sell all—Mr. Jamison was never given Unit 2. He was supposed to buy the whole Garcia Tract.

Q. He was going to buy it all?

A. The Garcia Tract.

Q. And then you were going to resell, among others, Unit 2? A. For Mr. Jamison?

Q. Yes?

A. No, there was never such a deal with Jamison for a resale. No, he was supposed to buy it and then it blew up and he didn't buy it. There was never any talk for me to resell for Mr. Jamison. Never.

Q. Did you ever meet Mr. William Moore?

A. I have never met Mr. William Moore or any of the other Hollow Tree people. I met them only at the trial.

Q. Before Judge Murphy in April?

A. Before Judge Murphy. That is the first time I met them. [226]

Q. You have never met any of the people to whom Sugarman Lumber Company sold portions of the debtor's property except Mr. Holm?

A. No. That is why I brought Fred Holm into the picture, he did all that. That is why I got him into the picture, because he knew the men. I had sold him already 200,000,000 feet. That was his job, and I had him work with Mr. Steinberg, and I worked with them. I met with Mr. Steinberg and Mr. Holm time and time again on this resale.

(Testimony of Alex E. Wilson.)

Q. Your contact with Mr. Steinberg and Mr. Holm?

A. Why, of course.

Q. Now, you knew, did you not, that after the beginning of 1954 Sugarman Lumber Company negotiated new contracts with Mr. Holm and Hollow Tree?

A. Certainly, certainly.

Q. And that all of these contracts provide for the sale of portions of the timber over a long period of time?

A. That is true. Yes, I knew that.

Q. Now, you mentioned a commission that you had coming on a sale to Mr. Holm, who was to pay that commission?

A. Commission, I never got any commission from Mr. Holm.

Q. No, you mentioned that you sacrificed a commission.

A. Oh, I said ordinarily if I or any broker who would sell like I did 200,000,000 feet of timber to Mr. Holm, I get a dollar a thousand for selling timber, not 5 per cent. I would make [227] \$200,000, but I didn't do that. Mr. Stevenot was telling me I wouldn't be paid, ordinarily I would have said, "O.K., then I will take \$200,000." But I sacrificed that. I said, "I won't take the \$200,000, Mr. Holm, we will give the stockholders the benefit of that money and the purchasers."

Q. Is that a commission you would have collected from the Sugarman Lumber Company?

A. No, I would have collected it from Mr. Holm.

Q. From Mr. Holm?

(Testimony of Alex E. Wilson.)

A. Why, certainly. That is the way every broker does.

Q. Well, if you had collected that commission would Mr. Holm have paid Sugarman Lumber Company less for the timber?

A. Why, certainly, if I would have added a \$200,000 commission on there, Fred Holm would have had to pay more money, wouldn't he? He would either have to pay more money or the Coastal Plywood Company would get less money.

Q. Well, you saved this commission for Mr. Holm, did you not? A. Pardon?

Q. You saved this commission for Mr. Holm?

A. I saved it?

Q. Saved. This commission that you didn't collect represented a saving to Mr. Holm?

A. No, I saved that for Coastal Plywood Company. Coastal Plywood Company got the whole amount of money that Mr. Holm paid without one cent of commission to anybody. [228]

Q. Coastal Plywood & Timber Company did not sell any timber to Mr. Holm, did they?

A. Oh, well, they didn't directly, but that helped make the deal. If we hadn't sold for Sugarman, Sugarman would never have bought the property. He so notified us in the letter, the letter is here, you know that. We had to resell before Sugarman would purchase. We did just that.

Q. I believe you mentioned you were present at a hearing before Judge Murphy in April?

A. I don't hear you, Mr. Olson.

(Testimony of Alex E. Wilson.)

Q. I believe you testified here that you were present at a hearing before Judge Murphy in April of this year, 1954?

A. I was, sir, yes sir.

Q. That involved an attempt to set aside the trustee's second plan or reorganization, did it not?

A. Some stockholders trying to set it aside.

Q. And Mr. Steinberg was one of the people who was behind that attempt?

A. I don't know anything about that, I was just there as a listener, I sat there listening and I knew nothing about the case, know nothing about it now, at all.

Q. You knew that Mr. Steinberg was endeavoring to present another proposal and get that substituted?

A. Oh no, I knew nothing about that, Mr. Olson.

Q. Did you hear the testimony at that hearing?

A. I heard some of it. I was in and out. I didn't hear all of it.

Q. You had at least one conversation with the trustee at that hearing, did you not?

A. I believe I did. I have forgotten. I believe I did. I have had several conversations. As I sat with Mr. Stevenot I had several conversations with him.

Q. That is correct. And you told both the trustee and myself did you not, that you were very angry at Mr. Steinberg because of the position that he was taking at that hearing?

A. Oh, I don't recall that I said that I was angry with him, whatever his business was——

(Testimony of Alex E. Wilson.)

Q. Do you recall saying that Mr. Steinberg had washed you out of your commission?

A. Oh, no, no. Steinberg, in fact, was the only one who gave me a contract to pay me anything. I think he felt sorry for me. I felt rather kindly toward Steinberg.

Q. That is what I am referring to. Do you recall stating that Mr. Steinberg was washing you out of your \$25,000?

A. Oh, no, I don't remember telling you that.

Q. Have you ever met Mr. Rudolph, President of Sugarman Lumber Company?

A. I met him at the court hearing.

Q. But not before the hearing in April of this year? A. No. [230]

Q. Have you ever met any other officer of Sugarman Lumber Company?

A. No. As I told you, Mr. Olson, that is why I brought Mr. Holm into the deal and Mr. Steinberg, to do the detail with those gentlemen in the resale.

Q. You brought them in to help you——

A. To help negotiate the deal, yes, to make it possible for Coastal to sell the properties, because Mr. Sugarman—Mr. Margolis had notified us that we must resell before he bought. So I needed Mr. Holm. I brought him into the picture, and I needed Mr. Steinberg, because he was the contact with Sugarman. Mr. Holm was the man who had the contact with the mills that were going to purchase. So I had to have both of them.

Q. Now, Mr. Wilson, it is true, is it not, that all

(Testimony of Alex E. Wilson.)

the letters that you wrote to the trustee have been introduced into evidence at this hearing?

A. I don't know that that is all of them. That is all that I have. I didn't keep a hundred per cent file.

Q. That is all you recall?

A. That is all I know of.

Q. Then the trustee only wrote you the one letter, that of July 22nd?

A. I believe that is all I have. He may have written some more, but that is the only one I have.

Q. Do you recall a conversation with the trustee on May 20, [231] 1954 at the Clift Hotel?

A. I do, definitely.

Q. Was anyone else present?

A. His secretary.

Q. At that time you told the trustee that you were going to file a claim against the debtor for broker's commission? A. I did, I did.

Q. The trustee was quite surprised, was he not?

A. I don't know whether he was surprised or not.

Q. He reminded you, did he not, of his letter to you and his repeated advice that neither he or the debtor would pay you any commission on any sale of Coastal property?

A. That he or the debtor. Yes, he told me that.

Q. And you told him you would acknowledge all that, didn't you?

A. Oh, I said, "Certainly, I have already given it to my attorney." I said, "you didn't have any

(Testimony of Alex E. Wilson.)

right to write me that sort of a letter, Mr. Stevenot."

I said, "I pulled you out of a terrible hole, and all the rest of you and I sold the property for you," and I said, "You didn't have any right to say that you wouldn't pay me, because as I understand it it is up to the court, and I think you should have paid me, Mr. Carr told you that you should pay me, but you won't do it, so I will just have to sue you. I hate to do it, Mr. Stevenot. I have learned to be very fond of you, but if I [232] must go to court for justice I will just have to do it."

That was the conversation at the court.

Q. Well, the fact is, isn't it, Mr. Wilson, that you never intended to collect a commission from the debtor until April of this year when you found that you couldn't collect your \$25,000 from Mr. Steinberg?

A. Oh, no, I don't consider \$25,000 a commission on this deal. That would be ridiculous.

Q. But you never told the Trustee that you were going to seek a commission until May of this year?

A. I didn't tell the Trustee that because I knew that the Trustee was giving me double talk. You see I knew that the Trustee had a letter on the 22nd of July that the buyer would not pay me. He had that letter. I had a copy of it too.

Q. Just a moment, Mr. Wilson. Now you have already stated that his letter of July 22nd simply expressed what he had verbally told you on prior occasions?

(Testimony of Alex E. Wilson.)

A. That isn't what I am saying to you, Mr. Olson.

Q. You got that?

A. I acknowledged that letter, but I also stated, Mr. Olson, that Mr. Stevenot had another letter on the 22nd from the purchaser saying that they wouldn't pay me, but Mr. Stevenot went along for seven months telling me, "Mr. Wilson, you get your money from the buyer," when he knew they weren't going to pay me, he was notified in writing, on July 22nd. [233]

Q. Have you ever received any commission or compensation on any transaction in which the debtor or Mr. Stevenot was involved?

A. I have never received one cent from anyone in connection with any of the Coastal Plywood properties except the \$5000 that Coastal paid me for the Nielson sale.

Q. Or any other transaction in which the Trustee was involved?

A. Never one nickel have I received from any human being.

Q. So then when you testified both on June 21st and again this morning, Mr. Wilson, that "Mr. Stevenot always paid me in the final analysis," you were referring only to the sale of the cutting contracts, is that right?

A. I am referring to the \$5000 he paid me on the sale of the Rickard, Brush and Remmell contracts, that is true, 5 per cent of \$100,000.

(Testimony of Alex E. Wilson.)

Q. What is the largest block of timber you have ever sold, Mr. Wilson?

A. Well, I can give you—I sold almost a billion feet, I checked the other day, and I have never received less than \$1.00 per thousand.

Q. That isn't my question, Mr. Wilson. What is the largest tract that you have ever sold?

A. The largest timber tract that I sold was 78,000,000 feet belonging to the Bradley Estate of Chicago, which I sold about four years ago to the Feather River Pine Mills at Feather Falls, [234] California. I sold all of the timber.

The second largest was 57,000,000 feet. That was the timber that belonged to the Red River Lumber Company, they are at Westwood, but they have this 57,000,000 feet in Butte, Yuba and Plumas Counties. I sold that to Dant & Russell, to the Oroville Lumber Company, which is owned by Dant and Russell.

And I sold several large tracts, other large tracts of 40 or 50 million, large tracts. I sold the Cascade timber, 40,000,000 feet in Plumas County; Morgan Bar, 20,000,000 feet.

Q. How large is the tract of timber purchased from the debtor by Sugarman Company?

A. It is 36,000 acres.

Q. And how many board feet of timber on that tract?

A. There is 585 or 560 million feet. There is supposed to be — Swede Wallen, the cruiser, told me that there would probably be 200,000,000 feet more

(Testimony of Alex E. Wilson.)

of second growth, that he didn't figure in the merchantable timber. This 585,000,000 or maybe 565,000,000 feet all together, that is first growth timber, and Wallen told me that he thought there was 200,000,000 feet of second growth that he didn't figure.

Q. Now, Mr. Wilson, this involves a large volume of timber, involving a million dollars or more, the customary commission is far less than 5 per cent? A. Is what?

Q. The customary commission is far less than 5 per cent, is it [235] not?

A. Not at all. I have sold almost a billion feet. I have never received—only once did I receive 5 per cent, and that was a sale I sold to Dant and Russell—I sold to Bercut-Richards Cannery, I sold them 60,000,000 feet of Dant & Russell timber. They operate at Gray's Flat, a sawmill in Eastern Yuba County, they offered me \$11.00. It was almost a million dollar sale, it was almost all time, and there was a little confusion who was going to pay me, but, of course, the seller paid me, and I said, "Well, since there has been confusion, I only got you eleven," I took 5 per cent.

But all other timber sales—I sold all of the timber of the Idaho Maryland Gold Mines. They always pay me \$1.00 a thousand.

I sold all of the timber of Fred H-o-l-m-e-s in Yuba County.

Q. Do you know of any recent sales of timber involving as much as 500,000,000 board feet?

A. No. This is the largest timber sale that has

(Testimony of Alex E. Wilson.)

happened in California in 37 years, Mr. Olson. The sale of the Garcia tract is the largest individual sale of timber that has happened in California in 37 years.

The Court: Larger than the sale to Growers Supply?

A. Yes, it was, sir. There was 450,000,000 feet in the Fruit Growers, I have been told — I may be wrong. Mr. Tom Dant told me that was in the Fruit Growers sale. [236]

Q. You have been a licensed broker for 37 years?

A. Yes.

Q. You are aware that a broker cannot demand a commission on a real estate sale unless he has a written contract, in California?

A. Yes, that is so under the California laws, but I understand that that isn't true under the laws that we are appearing under before the Court. I know definitely, I have had experience, I have had many and many a deal in 33 years, and I know that if I haven't a written contract in California, no matter how honest I may be, if a man wants to cheat me out of a commission he can do so.

Q. When did you first realize that that rule may not apply to a matter involving a Federal Court Bankruptcy proceeding?

A. Oh, I found that out in Oroville one day when I was talking to a very able jurist.

Q. That was this year, was it not?

A. This year.

Q. Knowing that a written contract was neces-

(Testimony of Alex E. Wilson.)

sary you still did not seek any written contract with the Trustee, is that correct?

A. I had *a* sought a written contract with the Trustee for a long time, Mr. Olson. There was no need for me to be trying then.

Q. He told you he would not give you any written contract?

A. He didn't tell me he wouldn't give me a written contract. [237] He told me he wouldn't pay me.

Q. Wouldn't employ you as a broker?

A. Oh yes, he employed me, you bet he employed me and worked with me hand-in-glove for eleven months.

Q. Even though you knew that a written contract was necessary for such employment?

A. No, I knew it wasn't necessary for such employment. Mr. Carr told me it wasn't necessary, and he couldn't give me one. Mr. Carr told me in addition to that he had no right to set my fee. Mr. Carr told me that he was surprised at Mr. Stevenot's attitude, he couldn't understand it. Three days ago he said he withdrew from the case, wouldn't come up here. That is why he is not here. He wouldn't have any part in such shenanigans. That is why he withdrew from this case.

Mr. Olson: I move to strike that, your Honor, on the ground that it has no relevancy.

The Court: The motion to strike is granted.

Q. Now you have mentioned a total purchase price, I believe, of \$4,452,000 for these properties?

A. That is right.

(Testimony of Alex E. Wilson.)

Q. Isn't it a fact that it was actually less than \$4,100,000 because of inventory adjustments?

A. Well, there was some slipping back and forth on inventory. I know there was some misunderstanding about the inventory. It was less than it was supposed to be.

Q. Well, as a matter of fact a considerable portion of the [238] inventory was used up by operations during the winter?

A. Well, that may be true, Mr. Olson, but I knew nothing about that, that wasn't any of my business. I had completed my transaction. That was detail for Steinberg and Fred Holm and the others to work out.

Q. (By the Court): In any event you are willing to be bound by the final sales figure, are you not?

A. Yes, sir; yes, your Honor.

Q. Whatever adjustments there may be?

A. Yes, sir.

Q. (By Mr. Olson): Now, this \$25,000 that you have referred to as expenses, were those expenses in connection with your contact with Mr. Steinberg and Mr. Holm in developing—

A. Oh, that was my estimate of the money it had cost me during the entire eleven months. While I am traveling selling timber I appropriate \$50.00 a day, that is for meals and for gas and for entertainment, which runs about \$17,000 for eleven months and a half of work, and then there is advertising,

(Testimony of Alex E. Wilson.)

and I told Fred Holm that I would compensate him for his labors, what he had done for me.

Of course, the idea of splitting a commission, I am sorry he got such an idea. I have been a broker for 33 years. I couldn't split a commission with a man. I couldn't give him any commission at all. He is no broker. I have been a broker for 33 years. My record is just as clean as a hound's tooth. I know I just couldn't do a thing like that. [239]

If Fred has had a misapprehension I am very very sorry.

I told him that I needed him badly because he had the contacts with the mills around there, and I said, "I will pay your expenses, I won't let you be any money out of pocket, but, after all, Fred, you are getting this 200,000,000 feet and that is what you really want, so you are going to be taken care of."

Q. You were going to reimburse him for his expenses even though he was buying the substantial portion of this timber, is that right?

A. Yes. I thought that was only honest to do that, the money out of pocket, that wouldn't amount to very much, his expenses, they wouldn't amount to very much.

Q. And those expenses are a portion of your claim that you are now making against Coastal Plywood & Timber Company?

A. Pardon me, I don't get that question.

Q. Those expenses constitute a portion of your claim which you are now making against Coastal Plywood & Timber Company?

(Testimony of Alex E. Wilson.)

A. Oh, I am making a claim to Coastal Plywood & Timber Company for my commission on the sales price. A broker doesn't count his expenses against it. I have been in many deals where I spent more money than I got as a commission. My claim is based on 5 per cent of the sales price. Whatever I spend is my good fortune or against me. That is the way we operate.

Q. In other words, you expect your 5 per cent regardless of the benefit provided or what you have spent? [240]

A. Oh, I expect 5 per cent or such figure as the Court may deem proper. I feel like Mr. Carr told me, "You have no recourse now but refuge with the Courts."

Q. Now, back to this \$25,000 for a moment, if I understood your testimony correctly you estimated \$17,000 on the basis of a daily allowance for eleven months?

A. Well, eleven months, I haven't figured it up, but \$50.00 a day for 11 months would be \$1500 a month, wouldn't it, ten months, it would be \$15,000, and it would be \$16,500 for 11 months. That would be my—for my work, and then in addition to that I have automobile expenses, gas expenses, I entertain a great deal—you must entertain lumbermen, Mr. Olson, you don't go down to the Palace Hotel and sip a cup of tea, you entertain these men, and it takes money to do that.

Q. This \$50.00 a day is an allowance for your time?

(Testimony of Alex E. Wilson.)

A. That is my time. My time is worth that, Mr. Olson.

Mr. Olson: I have no further questions, your Honor.

The Court: Do you have any questions, sir?

Mr. Dudley: Not very many.

The Court: Well, ask them.

Mr. Dudley: I think he covered most of them I wanted to ask.

Cross Examination

Q. (By Mr. Dudley): Mr. Wilson, who is your attorney?

A. Sterling Carr has been my attorney for many years. Oh, you mean in this case? [241]

Q. Who is your attorney, period?

The Court: Maybe the man has had more than one attorney.

Q. (By Mr. Dudley): How long has Mr. Carr been your attorney? A. I would say 25 years.

Q. And he has been your very good friend for 25 years, too, is that correct?

A. I think he is one of the most honorable men I have had the pleasure of meeting in my life.

Q. You therefore seek his advice about many things, is that correct? A. Many things.

Q. In all your business dealings do you seek his advice? A. Not all of them.

Q. In a great many of them, shall I say?

A. A great many of them, yes.

Mr. Dudley: That is all I have, your Honor.

The Court: Any further questions?

Mr. McMurchie: I have no questions, your Honor.

The Court: All right, step down, please.

We have arrived at 4:30 and we are not going to be able to get through with Mr. Stevenot because there is going to be substantial cross examination on the direct examination, and I anticipate that there is going to be considerable direct examination.

Mr. Olson: That is correct, your Honor.

The Court: So we are up against the same [242] proposition we had before, a time for further hearing. Are there any motions to be made at this stage of the proceedings? Have you concluded your evidence?

Mr. McMurchie: Well, I have some evidence I wanted to introduce, your Honor, some particular pleadings in the file.

The Court: What are they?

Mr. McMurchie: Well, I am referring to the petition of Mr. Wilson, which I understand must be introduced in evidence under the Federal Rules of Procedure. I also want to call attention to the second plan of reorganization and some other documents.

The Court: Well, do you have the documents? I think you better read what you want or call the Court's attention to them. I am not going to look at them right now. I mean what documents are you referring to?

Mr. McMurchie: Well, the documents I specifically refer to, I would like to offer Mr. Wilson's petition which has been filed in this matter into

evidence to be considered along with his testimony on the stand.

The Court: That is in the form of an affidavit?

Mr. McMurchie: Yes, it is in the form of an affidavit.

The Court: Well, that is before me.

Mr. McMurchie: I realize that. I just understood it was not formally introduced without being offered.

The Court: It is not in evidence.

Mr. Olson: I know of no such law, your Honor, [243] that the petition has to be introduced in evidence.

The Court: I know of no reason why it has to be. It is before me.

Mr. McMurchie: I should also like to introduce, your Honor, the Order of this Court that was made in the Nielson matter, I believe it is in File 4.

The Court: All right, that is appropriate, unless it is already in evidence in some other form.

Mr. McMurchie: No.

The Court: But you will stipulate to that, won't you, Mr. Olson?

Mr. Olson: Yes, the entire file relating—anything that is in the record before this court, of course.

Mr. McMurchie: Yes. I just wanted to particularly call that to the Court's attention.

The Court: If that is satisfactory with you, then all the files will be in evidence.

Mr. McMurchie: Well, I just thought I would

point out to you what files I am interested particularly in.

The Court: Yes, that is perfectly all right. And then when you come to argument you can refer to them. Do you agree with Mr. Olson that all the files be admitted into evidence?

Mr. McMurchie: Very satisfactory.

The Court: That will be the order, and then you can refer to all the documents you wish. [244]

Mr. McMurchie: I assume that you are there including the financial reports of Coastal which are in the files.

Mr. Olson: Well, all the matters in the record, yes.

The Court: Now then, does that conclude your presentation?

Mr. McMurchie: I have just one other document that I would like to offer, your Honor, and that is a certificate by the Secretary of State of the State of California showing the incorporation of the Sugarman Lumber Company on November 6, 1953. It is introduced only to corroborate Mr. Steinberg's testimony that this company was formed for the purpose of purchasing the assets of Coastal Plywood & Timber Company.

Mr. Olson: I don't believe that corroborates that testimony. This simply states that articles were filed——

The Court: Well, he said that there was a corporation formed about that time, and if that is true I will admit it into evidence, I don't know what probative value it will have or what weight

it will have, but it is admissible, and it will be admitted as Petitioner's exhibit next in order.

(The document referred to was marked Petitioner's Exhibit No. 15.)

Mr. Hildebrand: As long as this matter has to go over, your Honor, anyhow, we did have in mind putting Mr. Stevenot on for some questions on cross examination.

The Court: Yell, you are not going to be lost—oh, that is part of your case?

Mr. Hildebrand: If we could terminate the case [245] today without him we would be willing to do it.

The Court: No, unless there is some matter of law that would terminate it, but in any event, as I take it, you want, as a part of the Petitioner's case to call Mr. Stevenot as an adverse witness.

Mr. Hildebrand: That is right.

The Court: So your case thus far is not in and you are not at a stage where a motion can be made as a matter of law.

Mr. McMurchie: That is right.

Mr. Hildebrand: We would waive that if we thought we could terminate it this afternoon, but as long as we can't terminate it we would feel better satisfied if we could cross examine Mr. Stevenot.

The Court: Well, Mr. Hildebrand, I don't want to, in effect, cross examine you, but the point is if you waive it then Mr. Olson will make his motions, as I understand it.

Mr. Olson: That is right.

The Court: —Based on the evidence, and if

you don't waive he can't, and I am not going to force you to waive. I mean that is something you have to decide.

Mr. Hildebrand: We would feel better satisfied if with the approval of the Court we could cross examine Mr. Stevenot at the next hearing.

The Court: Yes, as a part of your case.

Mr. Hildebrand: Yes. [246]

The Court: Well then, you have a right to do that. I am not going to foreclose you from that. But then that stops the motions.

Well, in that situation we have to discuss time.

(Discussion as to time of further hearing of this case.)

(Thereupon the further hearing of this matter was continued until August 2, 1954, at 10:00 a.m.) [247]

Monday, August 2, 1954

The Clerk: Case No. 12,223, In Re Coastal Plywood and Timber Company, Petition for Agent's Fees.

Mr. Hildebrand: We would like to call Mr. Stevenot for the purpose of cross examination, if your Honor please, as part of our case.

The Court: You mean under Rule 43 (b)?

Mr. Hildebrand: Under the rule, your Honor, yes.

The Court: As an adverse witness?

Mr. Hildebrand: As an adverse witness.

The Court: All right, Mr. Stevenot, step forward and take the oath.

Will this conclude your case?

Mr. Hildebrand: I think so, your Honor, unless there is a document or something like that that Mr. McMurchie still has in mind.

FRED G. STEVENOT

called as a witness by the Petitioner, sworn.

Direct Examination

Q. (By Mr. Hildebrand): Mr. Stevenot, you are the Trustee, appearing as Respondent to this Petition on file in this matter? A. I am.

Q. And as Trustee you have been represented by counsel, Mr. Olson, who is here, and also by Mr. Sterling Carr, is that correct? [250]

A. That is right.

Q. And along in June or July of 1952 did you meet Mr. Alex Wilson, the Petitioner in this matter, for the first time?

A. As I recollect, yes.

Q. And do you recall if he was referred to you by one of your attorneys, Mr. Sterling Carr?

A. Well, I recall that he came over at the suggestion of Mr. Carr at that time, at that meeting. I have no knowledge of that.

Q. You didn't have any knowledge of the fact that he came over at the suggestion of Mr. Carr?

A. No, not when I first met Mr. Wilson, no.

Q. But you found out later on that that was true, didn't you?

A. I think later on Mr. Wilson informed me

(Testimony of Fred G. Stevenot.)

that he had been talking to Mr. Carr and Mr. Carr had suggested that he come over to see me.

Q. Yes. And Mr. Wilson did inform you that his reason for coming over to see you was at the suggestion of one of your attorneys, Mr. Sterling Carr, is that right? As your meetings with him progressed you learned that?

A. Well, Mr. Wilson may have stated that to me.

Q. Yes. A. I will say he might have. [251]

Q. Yes. He testified here that he advised you—does that refresh your memory at all?

A. Yes, I recall that.

Q. That he advised you that he had come over to see you at the suggestion of Mr. Carr?

A. Yes, that he had been talking to Mr. Carr.

Q. Yes.

A. And Mr. Carr referred him to me.

Q. Yes. A. That is right.

Q. All right. Then when you saw him the first time did you discuss with him the possibility of selling some of the Coastal Plywood properties?

A. No, I did not.

Q. Did you discuss the so-called Nielson deal with him, those various cutting contracts that eventuated in the Nielson deal?

A. My recollection is that in July he came in and told me that he understood that they were for sale and that he had a buyer.

Q. And when you first saw him did you discuss that you would like to sell these contracts?

A. No, I did not.

(Testimony of Fred G. Stevenot.)

Q. Did you see him on several occasions along in June or July of 1952? [252]

A. In July at the time that he came in I told him that I was engaged in negotiating changes in the contract that would enable Coastal to take advantage of the additional timber, if we could work out changes in the agreement so that we could get into the timber, and also some modifications of the provisions of the contract with the Rickard group.

Q. There were these three contracts known as the Rickard, Brush and Rimmell contract that you were talking about? A. That is right.

Q. And you explained to him about those contracts and that you would like to sell those cutting contracts some time along in June or July, did you not?

A. Well, in July, to be exact, he came in and told me that he had a customer, that he understood that they were for sale and that he had a customer for them, and at that time I told him that I was engaged in attempting to re-negotiate the contracts. That was at our meeting in July.

Q. And did you tell him on any of these occasions that you wanted to get \$100,000 cash for these cutting contracts?

A. Later on, that is right.

Q. And about when was that, did you tell him that?

A. That was in the latter part of July, I believe, or first part of August.

Q. Then did he come back and tell you that he

(Testimony of Fred G. Stevenot.)

had a buyer, Mr. Nielson, who would pay \$100,000 for those contracts? [253]

A. As I recall, he told me that he thought he could make a deal with Mr. Nielson of Santa Cruz.

Q. And you didn't have any written contract with him that you would pay him any broker's commission on those contracts, did you?

A. No, but at the same time I told him that I wouldn't pay, not recommend a broker's fee, that he must secure his compensation from the buyer.

Q. You told him that on a number of occasions?

A. I told him that on a great many occasions.

Q. And on each occasion he told you that he would try to do that, but that was a very hard thing to do, isn't that right?

A. No, he did not qualify his statement. He understood it.

Q. Didn't he tell you on a number of occasions that in his many years of experience as a real estate broker handling timber deals that the seller always paid the commission?

A. I recall on one occasion that he told me it would be difficult to do, but that didn't change my opinion.

Q. And you didn't have any prior authorization from the Court for the payment of any commission on this Nielson matter, did you?

A. Later on I did, yes.

Q. Well, you later got the authorization for the payment of that brokerage fee? [254]

A. That is what I am referring to.

(Testimony of Fred G. Stevenot.)

Q. But before that authorization of the Court was made or that order given by the Court you had no prior authorization? A. No.

Q. And you had no written contract or agreement to pay a brokerage fee?

A. That is right.

Q. As a matter of fact, the only agreement or understanding you had with him was that you told him to try to get the fee from the buyer, isn't that right?

A. I told him beyond that, that I would not pay any commission.

Q. And you told him that you had to get the Court authority for anything that you did, didn't you?

A. Yes, he understood that. That may have come up in the conversation.

Q. But he went ahead and made the sale and finally, pursuant to your request, the Court made this order of the 12th of November, 1952, and I am reading now from the Court's record, a part of the Court record, your Honor:

"3. That Fred G. Stevenot as Trustee herein be and is hereby authorized to pay A. W. Wilson from said sum of \$100,000 a commission on said transaction in the amount of \$5,000.00."

That was a portion of the Court's order, wasn't it? [255]

A. Yes, it was a condition imposed upon me by Mr. Nielson.

(Testimony of Fred G. Stevenot.)

Q. Yes. Mr. Nielson, as a buyer, did not want to pay the commission, did he?

A. Beyond that he insisted that I pay Mr. Wilson \$5000.

Q. Because he didn't want to pay anything out of the \$100,000, isn't that right?

A. He didn't want to pay any more than the \$100,000.

Q. That is right. The deal was for \$100,000 and so if any commission had to be paid it had to be paid by you as Trustee pursuant to the Court's order, is that right?

A. Yes. If I was willing to reduce the amount coming to Coastal to \$95,000 and agree to pay at Mr. Nielson's demand \$5000 to Mr. Wilson that would take place, certainly.

Q. All right. Now, then, after Mr. Wilson sold these Nielson cutting contracts—and there wasn't any question about the fact that he sold them, was there? A. I don't get that.

Q. There wasn't any question about the fact that Mr. Wilson put over the Nielson deal, was there? He sold the contracts, didn't he?

A. He sold the contracts—let us put it this way: As far as I was concerned, Mr. Nielson purchased the contracts.

Q. Yes, but the man who put the deal over as the broker, whether he was to get paid or not, was Mr. Wilson, was he not? [256]

A. Well, that may have been a fact, but nevertheless he was not representing me up to the time

(Testimony of Fred G. Stevenot.)

that I accepted the demand of Mr. Nielson that I pay \$5000 to Mr. Wilson.

Q. Well, he put the deal over for you, didn't he?

A. I have no doubt but what he secured Mr. Nielson, yes.

Q. You didn't know Nielson, did you?

A. No, that is right.

Q. You didn't have anything to do with selling the timber? A. I will grant that.

Q. All right. Then after he put the deal over for you on the Nielson matter he came in and you talked with him about selling the rest of the timber, did you? A. No, I did not.

Q. Well, you had various conversations with him about selling the rest of the timber, didn't you?

A. No, I did not.

Q. Why, didn't he write you letters about seeing various people about selling the timber?

A. The only understanding I had with Mr. Nielson was that I was engaged in attempting to develop a plan of reorganization, that I did not wish to sell the timber, any of the timber.

Q. Did you tell him you wanted to sell all the timber in a block? A. I did not.

Q. At any time you never told him that? [257]

A. I did not.

Q. Didn't he report to you that he was contacting various people, and write you letters that were procured here in the files, from your files, telling you that he was seeing people and trying to sell the timber?

(Testimony of Fred G. Stevenot.)

A. That was in spite of the fact that I told him in the first instance that I did not wish to sell the timber and in the next instance that I would not pay a commission, and that I was busily engaged in developing a plan of reorganization.

Q. Did you ever make any effort to sell the timber?

A. No, sir, not at that time.

Q. At any time did you ever make any effort?

A. Not as a body of timber, but sell the property as a unit.

Q. Well, to whom did you try to sell the timber?

A. Why, to various people.

The Court: He said he did not try to sell the timber, he said he tried to sell the property.

Mr. Hildebrand: The property.

A. The whole property, as a whole, yes, sir.

Q. When did you try to sell the property as a whole?

A. Why, any number of people came into my office, and there were at least eight or ten plans submitted, but at no time did I attempt to sell the timber as a unit.

Q. But the plans never came to anything, did they?

A. That is true, unfortunately, it did not at that time. [258]

Q. So that you, yourself, had no success in selling the property for the company as a unit?

A. Well, up to July when I was put on notice by the R.F.C. that they would not go along on the

(Testimony of Fred G. Stevenot.)

first plan of reorganization, then I decided that it would be necessary to sell the property as a whole.

Q. Prior to that you had been getting a barrage of letters and a great deal of information from Mr. Wilson as to contacts that he had made in attempting to sell the property, hadn't you?

A. Mr. Wilson wrote me a letter describing the contacts that he had made. I did not direct Mr. Wilson in any way, shape or form to contact people.

Q. Well was there any difference between the contacts that he made before the Nielson deal and your relations with him than the contacts or the relations after the Nielson deal?

A. Well, he never did represent me.

Q. Well, before the Nielson deal you say he didn't represent you, is that right?

A. He didn't represent me then. He represented Mr. Nielson.

Q. So far as the situation was concerned after the Nielson deal it was just the same as it was before, wasn't it?

A. Well, it may have been in his mind, I don't know, but it wasn't in mine. The same situation existed as to my instructions to him. [259]

Q. Now here, under date of the 9th of July, 1952—I think these original letters are in evidence here—perhaps I better refer to the exhibit numbers.

Mr. McMurchie: No. 10.

Mr. Hildebrand: This is Exhibit No. — This is the one I want to refer to first, Trustee's Exhibit No. A, this letter here, on the 9th of July, 1952?

(Testimony of Fred G. Stevenot.)

Do you recall that, receiving that letter from Mr. Wilson? (Exhibiting document to witness.)

A. Yes, I——

Q. You recall receiving the letter, all right. Now I will ask you some questions about this. The letter reads:

“Dear Mr. Stevenot:

“I am progressing in good shape toward selling the timber properties that we have discussed.”

You say that you didn’t discuss any timber properties with him prior to that time?

A. Mr. Wilson came in and he was interested in securing permission to sell the cutting rights. He came in any number of times. I do not recollect every meeting I had with him. He came in a number of times and a great many other people came in.

Q. And then he said: “Mr. Nielson, Clarence L. Nielson, is called out of town but will be back Friday. He is my prospective purchaser, as I told you.” [260]

Now he had told you about Mr. Nielson, hadn’t he?

A. Yes.

Q. Before he wrote you this letter?

A. Yes, but that doesn’t alter the situation that I was not engaging Mr. Wilson to sell the cutting contracts and pay him a commission. That is a definite position——

Q. In spite of that, though, you did pay him a commission, didn’t you?

A. Prior to what?

Q. In spite of that.

The Court: He said “In spite of that?”

(Testimony of Fred G. Stevenot.)

A. Yes, I did, but it was a condition imposed on me by Mr. Nielson and it was submitted to the Court.

The Court: In that connection did you ever discuss with Mr. Nielson the proposition of reducing the price of the cutting rights as far as the estate was concerned to \$95,000 and letting Mr. Nielson take care of Mr. Wilson?

A. I did, your Honor, exactly that.

Q. And what happened?

A. Mr. Nielson refused to do it. He said the time element was very important, and it was, he figured that he had to engage in litigation to get in and secure the timber, and he refused to do it. In fact, after submitting it to him and we discussed it he left my office, and it was a question then of whether I would lose the deal, and it was [261] equally important to me to sell the cutting contracts, time was running against the Company, so he left the office and we did not reach a settlement in spite of his offer.

But that afternoon I phoned him after considering it, and figuring it was necessary for me to submit it to the Court, changed my position, because we had about \$40,000 or \$45,000 of the Company's money in the contracts and the contracts would expire in 1956. I realized it would be practically impossible for me to negotiate, which they refused to do—I attempted to negotiate with Mr. Rickard and Mr. Swisher, his attorney, and I was up against the same situation as Mr. Nielson was. We needed

(Testimony of Fred G. Stevenot.)

time to litigate the matter, if necessary, and I was disinclined to litigate it. So finally I agreed that \$95,000 was a fair price, and that I would submit Mr. Nielson's offer to me to the Court, and I did.

Q. (By Mr. Hildebrand): Now, after that, then, after the Court approved the payment of this \$5000 commission, back in November, 1952, did you receive this letter—I think this is in evidence—of the 3rd of April from Mr.—this is our copy of it, I didn't find the other readily (exhibiting document to witness)—do you recall this letter from Mr. Wilson dated the 3rd of April, 1953?

Mr. Olson: May I see the letter? I don't recall that letter.

Mr. Hildebrand: I think that you have a copy [262] of it in your file.

A. Yes, I recall receiving that and also Mr. Wilson coming in and telling me about it.

Q. Yes. A. I do.

Q. Now then, from the third of April—that is nearly four months after this Nielson approval, Mr. Wilson wrote you:

“Dear Mr. Stevenot:

“I have had two unfortunate experiences. First I tried to sell the Coastal timber to the Hammond Lumber Company. Earl Birmingham, now President of Hammond, is a good friend of mine. He also came from Oroville. He finally turned the deal down.

“I then started working with Pacific Lumber. Very much to my disappointment Mr. Murphy said

(Testimony of Fred G. Stevenot.)

he did not want the property. However, we will not be discouraged.”

He wrote you to that effect, didn't he?

A. He did, and when he came in I immediately admonished him that I was not willing to sell the timber and also that he was not representing me, and that I would not pay a commission. I repeatedly told him that.

Q. Well, you told him——

A. If you will hear me through. As he sent these letters in to me, after my experience in the Nielson episode where I was obliged and practically forced to recognize a commission [263] I kept repeating, and as far as I was concerned I considered that it was always necessary to keep repeating to him.

Now, he may have written in that he was trying to interest these people in a plan of reorganization, for all I know, because a statement that he was attempting to sell it was in defiance of my instructions to him.

Q. Well, you told him the same thing that you told him about the Nielson property, didn't you?

A. Well, I understand——

Q. Your conversation with him as to the subsequent property after the Nielson deal was practically the same as you had had before the Nielson deal, wasn't it?

A. Well, the inference there would be, naturally, from your question, if I have to answer it that way, that I had just idly instructed him that I would not pay him a commission and didn't mean

(Testimony of Fred G. Stevenot.)

what I said, just because I was obliged under the circumstances to pay him a commission on the Nielson deal did not give him any privilege to go about and sell any timber in defiance of my instructions.

Q. Well, didn't you tell him to try to get his commission from the buyer?

A. Well, I didn't tell him that following that letter, but I originally told him that and had a full discussion and Mr. Wilson accepted the situation.

Q. Didn't he tell you prior—— [264]

The Court: Just a moment. In your own words, Mr. Stevenot, what did you tell Mr. Wilson about what he was to do or not to do in connection with any of the properties of Coastal Plywood, whether in units or in subdivisions thereof?

A. Well, your Honor, Mr. Wilson was, so far as I was concerned in my official capacity, just another broker. I had a number of brokers coming in trying to sell the timber and develop a plan of reorganization, and they would talk about where they were to get their commissions. I instructed them, just as I kept instructing Mr. Wilson. Mr. Wilson, I didn't care to discourage him from bringing in someone provided that I could stand on my position and not pay him a brokerage fee, and at no time did I encourage him to think that I would pay him a brokerage fee.

Q. (By the Court): What, in words, did you tell him, or as near as you can remember, what,

(Testimony of Fred G. Stevenot.)

in words, did you tell Mr. Wilson he could do or not do?

A. I told Mr. Wilson that I wanted to keep the property intact and that I was devoted to developing a plan of reorganization. If he had any client or anyone interested that he could bring them in, but that he should not look to me or to Coastal for a commission. That he had to get his commission from the purchasers or the proponents of any proposition. I definitely, over and over again, stated that.

Q. (By Mr. Hildebrand): And you told him that also before the [265] Nielson deal, did you?

A. Why, certainly.

Q. So the instructions you gave him were the same, both before and after the Nielson deal, is that right?

A. The situation was not the same.

The Court: No, he is talking about what you told him. I don't think Mr. Hildebrand is asking you to make any concession or inference. He just wants to know what you told him. Was it the same as you told him before the Nielson sale?

A. Yes, I told him I would not pay a commission, yes. No question about it.

Q. (By Mr. Hildebrand): Now, when was it that he told you that it was pretty hard to get the commission paid by the buyer?

A. Well, originally in one of our preliminary discussions when he first came in.

Q. And you have had a good deal of——

(Testimony of Fred G. Stevenot.)

A. He did not repeat that afterwards as consistently. He may have mentioned afterwards, I have no recollection, but I know in the first instance when he first came in that it was customary for the seller to pay.

“Well, this is a different situation,” I told him, that I would not further impoverish the situation that the equity stockholders had in the property by imposing a real estate or brokerage commission on them. [266]

Q. (By Mr. Hildebrand): Now then, it says here “P.S.” in this letter that I refer to on the 3rd of April, “Holm bought the May property, about eighteen million, not far from his mill. I don’t know who sold it, I think he bought it direct. I don’t know what he paid.”

Do you recall asking Mr. Wilson to find out about what Holm did in connection with the May property?

A. What he paid for it?

Q. Yes.

A. I have no recollection, but I might have asked him, out of curiosity, to find out how timber was selling in the neighborhood.

Q. Yes. And did you make any investigation or did you know from your previous experience, or did you learn how timber was sold and the practices in connection with the selling of timber or timber tracts?

A. Oh, yes, I have had considerable experience.

(Testimony of Fred G. Stevenot.)

Q. And do you know, as a matter of fact, that the buyer ordinarily pays the commission?

A. No, I don't know that, I know the customary approach to it, but many timber deals are made where there is an independent arrangement, and in some instances a party sells timber for a timber owner and comes to the buyer and does not exact a commission, or attempt to.

Q. Well, can you name any specific instances [267] that you investigated or learned of where the seller paid the—the buyer paid the commission rather than the seller?

A. No, I made no investigation.

Q. You don't really know what the custom is of the business?

A. Oh, yes; I have had considerable experience in the matter myself.

Q. Do you know that the custom of the business is that the buyer——

A. The companies that I have headed have purchased a great deal of timber.

Q. You know that the custom of the business is that the buyer ordinarily pays the commission?

A. Well, that is probably so.

The Court: You mean the seller?

Mr. Hildebrand: I mean the seller, yes, pardon me, your Honor. That is just the reverse of what we are talking about.

A. I am not confused, I transformed that in my mind immediately.

Q. (By Mr. Hildebrand): You can't think of

(Testimony of Fred G. Stevenot.)

any instance where the buyer paid the commission?

A. No, I won't say right now.

Q. All right. And you knew that at the time that you were talking with Mr. Wilson in connection with these transactions?

A. That made me all the more insistent to hammer home the [268] idea that I would not pay a commission, or Coastal pay a commission.

Q. Now, as Trustee—you have had experience as a Trustee in quite a few matters before, have you not, Mr. Stevenot?

A. Well, not acting as Trustee, but matters in bankruptcy and on bondholders' committees—yes, I have had.

Q. And you were familiar with the duties of a Trustee, were you not?

A. Yes; I became instructed in this particular case.

Q. And as Trustee you knew it was your duty to represent all the various interests involved, the stockholders and creditors, and try to sell this property, if you could, in order to make everybody whole, if possible, isn't that right?

A. Well, the forepart of your question I would say that my insistence upon hammering home the idea to Mr. Wilson that I would not pay a commission was predicated upon that, that I wanted to preserve as much of the equities to the stockholders as possible, but remember, I was appointed in this matter primarily to secure a reorganization of the Company, a financial reorganization, a material re-

(Testimony of Fred G. Stevenot.)

organization of the Company, and I devoted my time up to the submission of the first plan of reorganization that was turned down by the R.F.C. to that work, and I refused anything that would cut across that or deny me that opportunity.

Q. Well, that plan failed completely, didn't it, the first plan? [269]

A. It didn't fail completely, no. So far as a plan of reorganization, we had one, but it was necessary for me to get the assent of the creditors. I have no particular control over that.

Q. And when they didn't assent, why, that was the end of the plan, is that right?

A. That particular plan. I may have developed another one.

Q. Then following this letter of the 3rd you recall receiving this letter of April 7th—I think we have these letters here some place.

The Court: They are in evidence, Mr. Hildebrand.

Mr. Hildebrand: This is it. This is labeled as Petitioner's Exhibit No. 9.

A. You don't need to read or argue about it.

Q. No. Did you receive that letter?

A. Yes, I received it.

Q. All right. Now in this letter Mr. Wilson states to you:

“Dear Mr. Stevenot:

“I have the following rather encouraging report to make to you. The Welsh Brothers, Elwood and Jeff, of Willits, are fine prospects for the Coastal

(Testimony of Fred G. Stevenot.)

timber and mill. I first met these gentlemen about 18 years ago when I was gold dredging in Oregon. They have a large stand of Ponderosa pine near John Bay. Some years ago they sold the tract, I am told, for [270] around two million. Recently they bought the Charles Howard," and so on, and describes that situation.

"The above is good news.

"So that you will be informed as to what I have been doing, I recite the following:

"I have negotiated with the following, but up to now no luck."

And then he lists a number of timber companies that he has contacted.

The last paragraph:

"Merely for your information.

"With kindest regards, I am

"Yours truly,

"Alex Wilson."

Under date of April 7th.

Do you recall that letter?

A. Yes, I do.

Q. Do you recall receiving that information from him? A. I received the letter.

Q. All right. Then following that on June the 9th do you recall receiving a letter of June the 9th, Exhibit No. 10? (Exhibiting document to witness.) Do you recall that letter? You read that, did you?

A. Yes, I received it and read it.

Q. He said to you: [271]

"Dear Mr. Stevenot:

(Testimony of Fred G. Stevenot.)

“You have asked me to give you a list of the companies or individuals to whom I have tried to sell the Coastal Plywood properties.”

Did you ask him for a list?

A. No, I did not. That is not true, that statement.

Q. That isn't true?

A. That is not true, I didn't tell him or advise him to sell the property.

Q. Did you write him correcting him where he sent you this statement on June 9th, saying that you had advised him to give you a list? Did you reply to this letter?

A. No. Mr. Wilson came in and he was a welcome visitor coming in and talking to me about it, because he was very active in the industry, but always did I rely upon the instruction that I had given him up to the early part of July, when the R.F.C. turned down the first plan of reorganization, that I would not sell the timber, that I did not intend to sell the property, Mr. Wilson understood that, and these letters that you are reading, finally culminated in my writing him one letter.

Q. Well, that was after he made the deal for you, wasn't it, that you wrote him the one letter?

A. No, the deal was not made. The deal was in jeopardy for months. [272]

Q. We will go into that in a minute. This letter here of June 9th, did he also say to you, “At present I am working with the J. J. Sugarman Company and have great hopes that they are going to

(Testimony of Fred G. Stevenot.)

submit a proposition to you. They are now planning on coming to San Francisco to conference with you." Did he tell you that? A. That is right.

Q. Had you ever had any dealings or conversations or contact with the J. J. Sugarman Company previous to that time? A. To what date?

Q. June 9, 1953. A. No, I had not.

Q. Was that the first that you heard of or knew of the J. J. Sugarman Company as being interested in this matter?

A. Well, I don't know from even reading the letter whether they were interested.

Q. Well, I mean this is the first you heard about them, isn't it?

A. Well, the first I recollect of hearing about the Sugarman Company.

Q. All right. "Others to whom I have submitted the Coastal properties to are"—and then he lists over a half a page of contacts here.

"In some cases I took the prospects to the property. I have in my files the correspondence with the above concerning [273] the deal. In addition I have submitted the deal to several individuals whom I shall not bother to mention herein.

"Yours truly,

"Alex Wilson."

Now in addition to writing you in this respect he also brought them into the office to discuss these matters with you at various times, didn't he?

A. Well, he would come in at times, he wouldn't discuss this as fully as you see there in the letter,

(Testimony of Fred G. Stevenot.)

but invariably I would bring up the situation to remind him that in spite of these letters and in spite of these contacts that the property up to a certain date in July was not for sale and that I would not pay a commission.

Q. Now, on June 21st, another letter——

A. I have no control over Mr. Wilson's persistency.

Q. This is Plaintiff's Exhibit No. 11. Do you recall receiving and reading this particular letter? This is Exhibit No. 11 (exhibiting document to witness). Do you recall reading that letter, do you, when it came in?

A. Well, I have got a very faint recollection of that letter, because he has written me so many letters telling me he had contacted this party and that party, that——

Q. This one is June the 21st, just a month before the Sugarman offer.

“Dear Mr. Stevenot: [274]

“I went today per schedule to the office of Mr. William Steinberg, who represents the Sugarman Company of Los Angeles and New York. The upshot was that Mr. Sugarman did not arrive. Mr. Steinberg informs me that after studying the deal with the Sugarman Company the Sugarman Company decided that they did not want the deal. Quite surprising to me after such assuring talk.”

Up to that time had you had any contact with the Sugarmans?

A. No. I don't wish to impeach these letters,

(Testimony of Fred G. Stevenot.)

but my recollection is not emphatic or firm enough to pass upon each one of these letters in relation to any particular party that he claimed to have contacted. I would have to check my files.

Q. Well, perhaps I can refresh your recollection on this next one:

“However, I immediately talked over the telephone to Mr. Eugene Brewer, President of U. S. Plywood Corporation, Shasta Division. Mr. Brewer, who I know and who is a very reliable man, states that he is sure his company will be interested. To-day he is telephoning to his New York office. I have left for Redding, California to see Mr. Brewer and will be in his office tomorrow.

“Hoping that the above will develop, I remain

“Yours truly,

“Alex Wilson.”

Do you recall discussing with him the possibility [275] of selling to the U. S. Plywood Corporation?

A. Not selling the timber, but if they would be interested in submitting a plan of reorganization. I recollect very well Mr. Wilson talking about U. S. Plywood.

Q. And do you recall saying to Mr. Wilson in that connection, “These are the people to see because they have got the money”?

A. Well, always on the assumption that he was following my instructions that he, if he brought anyone in, would see to it—that on a plan of reorganization he would be compensated on any deal

(Testimony of Fred G. Stevenot.)

that was made by the parties submitting the reorganization plan.

Q. In that connection you repeatedly told him to try to get his commission from the buyer, is that right?

A. No, I didn't say to try; no, I don't think we referred to that——

Q. And didn't he repeatedly say, "Well, that is a pretty hard thing to do, Mr. Stevenot"?

A. No.

Q. ——"but I will see what I can do"?

A. No. He did originally, but he did not repeat that. He acquiesced and as far as I knew he was following my instructions.

The Court: Mr. Stevenot, I am interested in what you mean by "plan of reorganization" when you talked about U. S. Plywood. Do you mean that U. S. Plywood would invest in the present company or that U. S. Plywood would purchase the whole [276] property at a price that would be a fair price so that the estate—that is, the stockholders and creditors and all would be protected?

A. That we would know what each particular division or segment of the company would receive, and I was particularly interested in so far as the stockholders were concerned to see that they got their money with a profit, if possible.

Q. Well, when you say that you were interested in the plan of reorganization in reference to U. S. Plywood, did you mean that would encompass U. S. Plywood taking over the whole property?

(Testimony of Fred G. Stevenot.)

A. Yes, that is possible, your Honor.

Q. Would it be an operating agreement?

A. Well, it might be. They might take it over.

Q. In other words, there were several alternatives that you had in mind?

A. Many of them.

Q. Yes, all right.

Q. (By Mr. Hildebrand): You didn't assume in that connection or in these other connections that Mr. Wilson would exercise and use his time and his talents for nothing, did you?

A. I would not expect him to, but, I didn't want him to get it at the expense of the stockholders, because they were at all times in a very precarious position.

Q. Well, this deal that finally eventuated pulled [277] the stockholders out of their precarious position, didn't it?

A. Well, we are hopeful that it will.

Q. Now then, under date of July 17th do you recall receiving and reading this letter, Petitioner's Exhibit No. 12 (Exhibiting document to the witness)?

Just if you recall it?

A. No, I am not as emphatic in that, in receiving that letter. I don't recall that.

Q. Well, you read the letters that Mr. Wilson wrote you as Trustee, did you not?

A. Yes. I will say that the mention of these various companies is familiar to me, and I do not question that Mr. Wilson talked to me.

(Testimony of Fred G. Stevenot.)

Q. And he wrote you as follows on the date of July 17th:

“Dear Mr. Stevenot:

“The following will bring you up to date in my attempts to sell the Coastal Plywood properties:

“1. Mr. G. C. Brewer, President of United States Plywood Company, has a crew of men going over the timber holdings. This group is headed by Harry Russell, Log Production Manager for U. S. Plywood.

“Within a few days Mr. Brewer will write us a letter stating his plans.”

Do you recall that now; do you?

A. Yes, but the point I make here is that——

Q. We are not asking you to argue the matter, Mr. Stevenot.

A. I understand, but I must explain my position. Can I explain it?

The Court: Certainly, explain your answer.

A. He has written me a number of letters, and finally it culminated in a situation that I had to recognize. It had seemed to be a build-up that he was representing me and that he was serving me and that he was interested in bringing someone in to purchase the property. So at that time, following the receipt of several of these letters, that included, why, I discussed it with Mr. Olson and Mr. Harrington, and told him of my concern over it, and as a result of a meeting a letter was prepared that I sent to Mr. Wilson.

Q. After he put over the Sugarman deal?

(Testimony of Fred G. Stevenot.)

A. Oh, no, he didn't put over, the Sugarman deal was not put over at that time.

Q. Well, after the first proposition came in on the Sugarman deal then you wrote the letter, didn't you?

A. Well, it may have been a coincidence, but the proposition that came in on the 22nd brought in by Mr. Steinberg was never consummated and never amounted to anything.

Q. Well, it was the follow-up of that that made the deal for Coastal Timber, wasn't it?

A. Well, there was also a period in there that the Sugarman people—that is, the J. J. Sugarman Company letter, and then [279] the Sugarman Lumber Company finally consummated the deal. But there was a period of a month or two that they completely dropped out of sight, that I heard nothing from anyone about it.

Q. But they made a proposition in that letter of the 22nd, the very day that you wrote the letter to Mr. Wilson, isn't that right?

A. No, that is the J. J. Sugarman Company, not the Sugarman Company.

Q. Well, they are the same people that got the timber, aren't they? A. Not exactly.

Q. Well, Mr. Margolis and Mr. Sugarman, they are all in the picture, aren't they?

A. Well, there were various changes in that, and what relationship they had finally in the matter that concluded the deal—because I recall that in the J. J. Sugarman Company offer there was a

(Testimony of Fred G. Stevenot.)

man by the name of Jamieson in it. I understood that he had a quarter interest in it with Mr. Sugarman, and he, between the time that the Sugarman people, the J. J. Sugarman group dropped out, he came in, he and his son, to see me, and as a result of that visit we had several conferences in an attempt to negotiate a deal, and Mr. Steinberg, at least I understood, was handling that for him.

Q. That was all after July 22nd, though, of 1953? [280] A. That is right.

Q. In this letter of July the 17th Mr. Wilson also stated to you:

“The Sugarman Company, represented in this company by Mr. William Steinberg, has again come back into the picture as possible buyers. Today Mr. Steinberg asked me to come to his office. He now states that within a few days he is going to hand me a proposal accompanied by a check.”

That was on the 17th that he wrote you to that effect.

Now, it was just a few days after that, on the 22nd, that Mr. Steinberg gave you this proposal, is that right?

A. It was not accompanied by a check.

Q. No, but it was a very definite proposal on the property?

A. No, it was not definite. It was rather just a statement that he would pay \$3,750,000 for the property, but I refused.

Mr. Hildebrand: We have that letter of the 22nd in evidence. What exhibit is that?

(Testimony of Fred G. Stevenot.)

Q. Here is the letter of July 22nd, Petitioner's Exhibit No. 3. You recall receiving this letter, do you not, on that date from Mr. William Steinberg?

A. Yes, I do, I recall.

Q. And was that letter delivered to you personally by Mr. Steinberg or how was it delivered?

A. It was delivered personally by Mr. Steinberg.

Q. And on the date it bears?

A. That is right. [281]

Q. It was on that same day that you wrote to Mr. Wilson the letter in evidence here in which for the first time in writing you tell him you are not going to pay him any commission, is that correct?

A. Well, that was a mere coincidence.

Q. Just a coincidence?

A. Just a coincidence.

Q. The fact that Mr. Steinberg here on behalf of the Sugarman interests, Mr. Steinberg being produced by Mr. Wilson, made an offer that the total purchase price of \$3,750,000 for all the net assets of Coastal Plywood was being offered—I think your Honor has this letter in mind. Has your Honor read this letter?

The Court: Yes.

Q. (By Mr. Hildebrand): The fact that you got that proposition on the same day had nothing to do with your writing this letter, Petitioner's Exhibit 14?

A. It had nothing whatsoever. I didn't know Mr. Steinberg was coming in or was to make the

(Testimony of Fred G. Stevenot.)

offer on that day. Several days previous, four or five days previous to that I had that conference in my attorney's office, and the letter was prepared and mailed——

Q. This letter that came from Steinberg, this Petitioner's Exhibit No. 3, do you have in mind or not this Paragraph 6:

“J. J. Sugarman Company, or its Successor in Interest, [282] shall not be responsible for any fees, costs or expenses by virtue of this transaction being called to their attention.”

A. Yes.

Q. You had that in mind?

A. No, I didn't have that in mind, but I remember that letter.

Q. You know that that was in their proposition?

A. Yes, that would be proper for them to put that in, a matter of precaution on their part.

Q. And the same day that you got that proposition with that in you wrote for the first time to Mr. Wilson in writing saying:

“Moreover, as I have previously advised you, neither I nor Coastal Plywood and Timber Company may be obligated for any commissions payable in connection with such a plan, and any such commissions must be paid by the investors for whom you act.”

You wrote that on that same day?

A. I wrote that letter on the same day, yes.

Q. When you already knew——

(Testimony of Fred G. Stevenot.)

A. It had no connection whatsoever with the Steinberg letter.

Q. When you already knew that these Sugarman people wouldn't pay a commission?

A. No, I didn't know that.

Q. You were perfectly willing to take the deal that Mr. Wilson had gotten for you and pay him nothing, is that right? [283]

A. I will revert to my original statement and understanding with Mr. Wilson, that I put him on record personally that I was not in favor and would not pay him a commission.

Q. I am not asking you that.

The Court: Just a moment. The question just propounded and the answer just given have elements of argument, and I don't want you to argue this case. If you stay with the facts I think we will get along better, because I don't want you to argue with Mr. Stevenot or Mr. Stevenot to argue with you.

But what I do want to know, Mr. Stevenot, is had you received the Steinberg letter by the time you had written the letter to Mr. Wilson? Were you aware of the Steinberg letter when you wrote the letter to Mr. Wilson?

A. No, the letter was composed several days before, your Honor.

Q. And when you prepared the letter to Wilson you were not aware of the Steinberg letter?

A. That is right.

(Testimony of Fred G. Stevenot.)

Q. (By Mr. Hildebrand): You say it is just a coincidence it was on the same date?

A. Just a coincidence.

Q. Well, as a matter of fact, in connection with the Steinberg letter, several days before that, on the 17th, Mr. Steinberg had come in to give you the substance of that letter?

A. Well he—there was another one came in a number of times [284] telling me what he was going to do and what the Sugarman would do, but there was always a wide disparity between what Mr. Steinberg would tell me and what I received from the Sugarman.

Q. Well, in any event, Mr. Steinberg was in a few days before the 22nd to tell you what the Sugarman were going to do?

A. Yes, he came in a number of times. I have people, your Honor, coming in and out for many months, for years.

Q. So that prior to writing this letter of July 22nd to Mr. Wilson you did know what the Sugarman proposition was?

A. No, I did not.

Q. Well, when he was in on the 17th didn't he tell you what the proposition was?

A. Well, Mr. Steinberg, with all due regard for him, telling me what was going to come to me and what actually came and what the Sugarman would do substantially, there was a wide disparity.

Q. Didn't he tell you the same thing in Para-

(Testimony of Fred G. Stevenot.)

graph 6 of this proposal that the Sugarman weren't going to pay any fees, costs or expenses?

A. No, Mr. Steinberg did not mention—he told me he was representing the Sugarman, and that he was setting up the deal for them, and that they were relying on him and that he had an understanding with Mr. Wilson.

Q. Well, you say that you consulted with your [285] attorney before writing this letter, that you consulted with Mr. Olson and Mr. Herrington. You had another attorney, Mr. Carr. Did you consult with Mr. Carr also?

A. No, I don't recollect that I did. As I went over to the other office quite frequently, we kept Mr. Carr informed, but I consulted with Mr. Olson, and Mr. Olson was busily engaged in the mechanics of doing the work, and I consulted with him many times. In this particular instance, though, the fact that I had received all those letters that seemed to be in a sense a build up there that he was putting himself in position to come in and claim in spite of my instructions to him, a commission, then I did sit down with Mr. Olson and Mr. Herrington to combat and put myself on record so that this very thing that has transpired here, your Honor, would not come up.

Q. You had also talked with Mr. Carr, hadn't you, about Mr. Wilson and whether or not Mr. Wilson had been referred to you by Mr. Carr, and various matters like that?

(Testimony of Fred G. Stevenot.)

A. No. Mr. Wilson came over and told me that he came from Mr. Carr's office.

Mr. Olson: Well, excuse me, that question is rather vague. It is in effect asking him what——

Mr. Hildebrand: Well, I will withdraw the question and put it this way:

Did you have any conversations with Mr. Carr about Mr. Wilson in this matter? [286]

A. Well no, I never had any conversation about Mr. Wilson in the matter with Mr. Carr.

Q. And did you know whether or not Mr. Wilson was also discussing what he was trying to do with Mr. Carr, your attorney?

A. No, Mr. Carr did not tell me so.

Q. Mr. Carr never discussed that with you?

A. No arrangement between Mr. Wilson and Mr. Carr were ever discussed by either Mr. Wilson or Mr. Carr with me.

Q. Now, Mr. Steinberg, he came in to see you some days before this proposition of the 22nd. Was Mr. Carr and Mr. Olson present with you when you talked with Mr. Steinberg about this Sugarman Lumber Company deal?

A. No, we were alone, Steinberg and myself.

Q. And did Mr. Carr at that time specifically say to you that he would not take care of Mr. Wilson or any other agent's commission in that particular transaction?

Mr. Olson: Mr. Carr, counsel?

Mr. Hildebrand: Yes.

Mr. Olson: Did Mr. Carr state——

(Testimony of Fred G. Stevenot.)

Mr. Hildebrand: No, did Mr. Steinberg state to you in the presence of Mr. Carr and Mr. Olson?

A. No, Mr. Carr did not discuss any of these Steinberg arrangements in regard to commission to be paid to Mr. Wilson with me.

Q. So that if Mr. Steinberg so testified he is in error in that connection? [287]

A. What is it?

Q. Your recollection in that connection is that you didn't have any such conversation with Mr. Steinberg?

A. That is right.

Q. Now, did you ever tell Mr. Wilson to bring in an offer of \$4,000,000 with substantial people and that you would be quite sure the Court would approve the deal?

A. What do you mean, a sale?

Q. Yes. A. No, I did not.

Q. Never made any such statement?

A. No such arrangement.

Q. Did you find out at any time in your discussions with your attorney, Mr. Sterling Carr, as to whether or not he had been talking with Mr. Wilson about the sale of these properties?

A. No, I had no discussion with him about it.

Q. At any time up to this date have you had any discussion with him about it?

A. Well, I wouldn't say that we had not discussed this matter that has developed here, yes.

Q. You have discussed this matter with Mr. Carr?

(Testimony of Fred G. Stevenot.)

A. When Mr. Carr was in my office, yes, it was a part of the topic of conversation, yes.

Q. And you have found out since, haven't you, [288] that Mr. Carr had also been discussing with Mr. Wilson about the sale of these properties?

A. No, he didn't tell me so.

Mr. Olson: I object, your Honor, I don't see the relevancy of any inquiry into any conversations that may have occurred after this Petition was filed.

The Court: These are conversations after?

Mr. Hildebrand: Well, I am just trying to get back to what happened before, and I'm just sort of tracing back——

The Court: Well, I will overrule the objection if the subsequent conversations relate back to prior conduct, but if they do not I will strike it, because subsequent conversations have nothing to do with the transaction at the time it was made, but if there is evidence of the transaction having taken place, why that is another matter.

Mr. Hildebrand: That is the purpose, your Honor.

The Witness: Will you state that question again, please?

Q. (By Mr. Hildebrand): Have you ascertained in your discussions with Mr. Carr as to whether he had any talk with Mr. Wilson about these deals before? A. Prior to this case?

Q. Yes.

A. No, we never had any discussions.

Q. You never talked to Mr. Carr about it?

(Testimony of Fred G. Stevenot.)

A. He may have mentioned Mr. Wilson, but we [289] had no discussion, no arrangements.

Q. You told us a while ago that you found out some time along the line that Mr. Carr referred Mr. Wilson to you. When was that?

A. Why, Mr. Wilson came over and told me that he went over and talked to Mr. Carr about the sale of the property and Mr. Carr said, "You go and see Mr. Stevenot," which is a proper instruction.

Q. Didn't you ask your attorney, Mr. Carr, about Mr. Wilson and about that?

A. No, I didn't.

Mr. Carr. He sent him over and that is a common thing to do.

Q. You never even mentioned that to Mr. Carr?

A. No, as I recollect, we never referred to it. Mr. Wilson did not outline any program that Mr. Carr had instructed him to come over and submit to me.

Q. You don't know then whether or not Mr. Carr encouraged Mr. Wilson to go ahead and try to sell this property?

A. No, I don't know that.

Q. And you never talked to Mr. Carr in that connectoin to find that out?

A. I don't understand why I should. In my mind it never existed.

Q. (By the Court): Well, the point is, you [290] didn't? I don't want you to argue with coun-

(Testimony of Fred G. Stevenot.)

sel. Your point is that you didn't, did not have any such discussion?

A. No, I never had any such conversation. Mr. Carr always advised me on legal matters, along with Mr. Olson. Other than that he didn't inject himself.

Q. (By Mr. Hildebrand): Did Mr. Carr advise you in relation to this matter?

A. Not telling me I should sell the property or what I should do in regard to the development of a plan of reorganization. As I proceeded I also took into my confidence Mr. Olson and Mr. Carr, but there was never——

The Court: Well, now, just a moment. What do you mean by "this matter"?

Mr. Hildebrand: Well, I mean as to this particular claim here.

Mr. Olson: I will raise the same objection, your Honor. The question as to what Mr. Carr——

The Court: It all depends on when it took place.

Q. (By Mr. Hildebrand): Did he advise you before the filing of this Petition that Mr. Wilson was entitled to be paid? A. No.

Q. Or that he had sent Mr. Wilson to you to try to make a sale of these properties?

A. I think I answered that by saying that he did send him over to see me. [291]

Mr. Olson: Same objection to any conversations subsequent to the filing of the Petition.

Mr. Dudley: And it has been asked and answered.

The Court: Well, if you want to go into con-

(Testimony of Fred G. Stevenot.)

versations that may disclose prior conduct I will not foreclose it, but if you are going to try to establish liability by subsequent conversations other than to show prior conduct I will have to rule that the question is inadmissible.

Mr. Hildebrand: Well, just one final question on that proposition: Is it correct that you never had any discussion with Mr. Carr as to the relationship or the work to be done by Mr. Wilson prior to the time that this Petition was filed asking for a brokerage fee in this case?

A. That is right, I had no conversation with him about that specific subject.

Q. So that if there was some discussion between Mr. Carr, your attorney, and Mr. Wilson you didn't know anything about it?

A. You say if there were?

Q. Yes.

A. I know nothing personally about it.

Q. If Mr. Carr gave Mr. Wilson any assurances, as Mr. Wilson testified to, that you were an honorable person and that if he put the deal over he would be paid, you had nothing to do with those assurances?

A. No, Mr. Carr did not tell me anything of that sort. [292]

Q. You can't say that Mr. Carr did not give any such assurances?

A. It is obvious I can't say that.

Q. He was your attorney in this matter, wasn't he?

(Testimony of Fred G. Stevenot.)

The Court: Well, that is obvious too.

Q. (By Mr. Hildebrand): Following the letter of July 22nd from Mr. Steinberg did you then continue to deal with Mr. Steinberg and various representatives of the Sugarman group until the deal was finally closed for the sale of the assets of Coastal?

A. Well, I might answer by saying I never did deal with Mr. Steinberg. He came in purporting to represent the Sugarman and deliver something to me.

Q. Was he the first contact that you had with the Sugarman?

A. Yes, I believe that is true.

Q. Outside of the letters that Mr. Wilson had written you that we have introduced here in evidence. Then after that, so far as the purchasers or the buyers were concerned, was Mr. Holm the next party you heard about who was going to buy a substantial amount of the timber on the overall deal, or did you hear about Mr. Holm?

A. Well, Mr. Wilson told me that he was engaging Mr. Holm's attention to purchasing some of the timber in the Sugarman deal, but that had nothing to do with the plan of reorganization or anything that I had charge of. [293]

Q. Well, so far as the plan that you had charge of was concerned and the final sale to Sugarman Lumber Company, there have been various figures mentioned here, do you have in mind exactly what that final sale was for, how much?

(Testimony of Fred G. Stevenot.)

A. No, I do not.

Q. Do you have that in mind now? Do you know what the figure was?

A. The figure that we——

Q. That was finally agreed upon?

Mr. Olson: I might suggest, counsel——

Mr. Hildebrand: Maybe we can stipulate to that. What is the figure?

Mr. Olson: I don't have it here, but it is in the record in the Trustee's report on the confirmation of the second plan of reorganization.

Mr. Hildebrand: Well, can we agree on what that is?

A. I can answer that, your Honor. I thought he was referring to the subsequent sales in carrying out the Sugarman plan.

Mr. Hildebrand: Oh, no.

The Court: He is talking about the transaction between the Trustee and——

A. Oh, \$4,352,000, something like that.

Mr. Hildebrand: That was the amount.

The Court: \$4,352,000?

Mr. Olson: He is referring to the gross price.

A. That is the gross price.

Mr. Hildebrand: That is the gross price.

Mr. McMurchie: You don't know what the adjusted price is?

Mr. Olson: No.

The Court: Well, you can stipulate on that.

Mr. Hildebrand: We can stipulate on that, I

(Testimony of Fred G. Stevenot.)

believe, except I just wanted to be sure I didn't forget to get it in the record.

The Court: \$4,352,000 is the gross figure.

Mr. Hildebrand: Gross price, gross figure.

Mr. McMurchie: I think it is \$4,452,000, your Honor.

Mr. Olson: Well, actually the gross figure is \$4,302,000 after giving credit to the accounts receivable which the Trustee retained, and the inventory adjustment brought it down to somewhere around \$4,100,000, I don't have the exact—

A. One hundred and thirty-two.

Mr. Olson: \$132,000?

A. \$4,132,000.

The Court: I will put down then that the net sale was \$4,132,000, subject to correction by counsel after examining the record, is that correct?

The Witness: Yes.

Mr. Hildebrand: Yes.

Q. Now, that sale was very beneficial, was it not, [295] to the stockholders and the creditors of the company? A. What?

Q. That sale was beneficial to the stockholders and creditors?

A. It was the best we could develop, yes.

Q. And I have here the statement that your attorney, one of your attorneys, Mr. Herrington—it is just an excerpt from the transcript that Mr. Herrington stated to the Court as to the benefit of this proposition to the estate, and do you recall

(Testimony of Fred G. Stevenot.)

the statement that Mr. Herrington made in that connection?

Mr. Olson: We will stipulate that the statement was made.

Mr. Hildebrand: Yes, and I would like, if I might, read this to your Honor as the statement of the attorney for the Trustee on the benefit of this——

Mr. Olson: I would like to question, however, the relevancy of this particular statement of the attorney for the Trustee and object to it on the ground it is irrelevant.

The Court: Just a moment, please.

Mr. Olson: If your Honor please, I would like to object to the introduction of any statement——

The Court: What materiality has it?

Mr. Hildebrand: The theory is this, your Honor, the benefit to the estate, and these cases all along go off a lot on——

The Court: On the equities?

Mr. Hildebrand: On the equities and the benefit to the estate in putting over the deal, the work [296] that Mr. Wilson did in getting these people together.

The Court: Well, I think, without conceding the last part, that is, agreeing that that is so, there may be some argument about the effectiveness of the work that Wilson did, but that the proposition is beneficial to the estate, that is, the sale, can be assumed from the record itself without reading any arguments about it. I don't think any parties here

(Testimony of Fred G. Stevenot.)

make any contest that it was not a beneficial sale. You don't make that point?

Mr. Olson: Oh, no, your Honor.

The Court: You are willing to stipulate that it was a beneficial transaction to the estate?

Mr. Olson: I will stipulate, your Honor, that the second plan of reorganization which encompassed this sale was most beneficial to the estate.

Mr. Hildebrand: We will so stipulate, your Honor. That will save us a little time.

There are a couple of other matters—I don't think these are in evidence (Referring to documents).

I will show you a telegram here dated June 24, 1953 addressed to G. A. Stevenot, and ask you if you recall receiving that from Mr. Wilson?

Mr. Olson: If your Honor please, for the record I would like to make the same objection that I made to all the other correspondence, that it is irrelevant, that it relates to the alleged efforts of Mr. Wilson which were prior to and clearly [297] unrelated to the transaction with the Sugarman Company.

The Court: I will overrule the objection, and the record is made, and I will take the same position on this. Now, Mr. Stevenot, would you answer the question? Do you recollect having received that telegram?

A. Yes.

Mr. Hildebrand: And you recall this other one, too of the 26th here?

(Testimony of Fred G. Stevenot.)

A. I had no control over Mr. Wilson.

Q. I am not asking you that.

A. I received it.

Q. You received it?

The Court: Now you want to put these in evidence?

Mr. Hildebrand: I would like to put these in evidence.

The Court: Well, subject to the objection they will be put into evidence. The early one will have the next Petitioner's number.

The Clerk: The telegram of June the 24th will be Petitioner's 16, and the one of June 26th will be Petitioner's 17.

(The documents referred to were marked Petitioner's Exhibits No. 16 and 17.)

Mr. Hildebrand: I would like to read these, your Honor, if I may.

The Court: You may.

Mr. Hildebrand: "June 24. G. A. Stevenot, 920 Bank of [298] America Building, Montgomery and California Streets, San Francisco.

"Will you please send immediately cruise and last operating report to Gene C. Brewer, President of U. S. Plywood Corporation, Box L-688, Redding, California. They are greatly interested in Coastal Plywood properties and want data for immediate conference in New York.

"Alex E. Wilson, Oroville Inn, Oroville."

The other dated June 26, addressed to the same address:

(Testimony of Fred G. Stevenot.)

"Coming home tonight. See you tomorrow stop. U. S. Plywood enthused about deal stop. Regards.

"Alex E. Wilson."

Mr. Hildebrand: Would this be a convenient time for your Honor to adjourn, or would your Honor prefer——

The Court: Well, of course, I want to go as far as I can on this matter. I want to know what you gentlemen expect on further time, because I have a jury trial going which I am recessing this afternoon until Friday.

Mr. Hildebrand: Until Friday?

The Court: Yes, and I want to know how much longer you are going to take, both of you, so I can——

Mr. Hildebrand: Well, I think we are almost through, your Honor. I might have a few more questions here after lunch, [299] but I wouldn't be very long, just a few minutes.

(Thereupon after discussion as to probable length of time required to complete the case, the further hearing of this matter was continued until 1:30 p.m. this date.) [300]

Afternoon Session, Monday, August 2, 1954

1:30 P.M.

FRED G. STEVENOT

resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Hildebrand): Mr. Stevenot, I no-

(Testimony of Fred G. Stevenot.)

tice in the affidavit that you filed in this matter that you say in Paragraph 8:

“Said offer presented to affiant by William Steinberg was not acceptable to affiant; that commencing in November 1953 affiant negotiated with N. N. Sugarman and Barney Margolis and their attorney Nathan M. Dicker concerning a possible offer to purchase assets of the creditor. Said negotiations continued over a period of several weeks and culminated in offer by Sugarman Lumber Company of Los Angeles, California to purchase all of the assets of the debtor except cash, accounts receivable and certain rights to recover property taxes. The said offer was dated December 12, 1953, and is attached to and constitutes a part of the second plan of reorganization of the debtor filed by affiant herein on December 21, 1953.”

Now, that statement in your affidavit, I take it, is correct?

A. It is correct.

Q. And then the Sugarman Lumber Company in this offer that you referred to, and this is from the files, Exhibit A in these files—— [301]

Mr. Olson: May I see it, counsel?

Mr. Hildebrand: This is attached to your reorganization plan. (Exhibiting document to counsel.)

The Sugarman Lumber Company signed on this offer, “N. N. Sugarman, President, by Barney Margolis, Secretary,” is that correct?

A. That is correct.

(Testimony of Fred G. Stevenot.)

Q. And how much money—you spoke this morning of some \$4,132,000 as the amount of the deal. How much money of that has already been paid?

A. How much has been paid?

Q. Yes.

A. Well, the assumption of the mortgage part of the Sugarman Lumber Company and the payment of the accrued interest, and a hundred thousand dollars to the note holders.

Q. And how much is still to be paid?

A. Still to be paid?

Q. Yes, sir.

A. Well, I would have to figure that out.

Q. It is around a million——

A. It is the amount paid by the Hollow Tree Lumber Company for the mill and for the timber and the deposits that were paid, the deposits on the Holm timber—I think as near as I can recollect now, I wouldn't know exactly what that figure is——

Mr. Olson: There is an element of accrued interest, counsel, [302] but we will stipulate, however, that it is \$2,130,000 plus accrued interest.

Mr. Hildebrand: So stipulated.

The Court: That remains to be paid?

Mr. Olson: Remains to be paid over a period of 15 years.

Q. (By Mr. Hildebrand): And how is that and when is that to be paid approximately?

A. Over a period of 10 years.

(Testimony of Fred G. Stevenot.)

Q. And when are the payments to be made and in what amounts?

A. Well, they will start—there are five notes and they will start after the repayment of the mortgage of \$2,000,000.

Q. And when is that to be paid?

A. That is to be paid in 10 years time.

Q. And there is a hundred thousand now in the account being held for the stockholders?

A. No, the hundred thousand dollars has been distributed to the stockholders.

Q. It has been distributed?

A. There is a little over \$200,000 yet due the stockholders made in advances and loans to the company.

Q. I see. Now, so far as any resale of the property was concerned over and above this \$4,132,000, were you familiar with that, or interested in the details of that?

A. No, I am not familiar with it.

Q. And if there was a resale of some 6½ or 7 million dollars [303] you are not familiar with the details?

A. No, and I don't understand—

Q. And whatever was done in that connection was done by the Sugarman people in other dealings that you didn't have anything to do with?

A. That is right.

Q. You recall, however, that Mr. Wilson discussed with you some time after this sale had taken

(Testimony of Fred G. Stevenot.)

place that he was to get \$25,000 for helping in the resale of some of this timber?

A. No, I understood from Mr. Wilson and also from Mr. Steinberg that he was to get \$25,000 from Mr. Steinberg, whatever Mr. Steinberg would receive from the Sugarman Lumber Company Mr. Wilson was to get \$25,000.

Q. And that was in connection with some \$2,000,000 that the Sugarmans were going to make out of the resale of the timber, wasn't it?

A. No, I don't know anything about that, no.

Q. Well, do you know now that there is a deal like that put through for the resale with about a \$2,000,000 profit?

A. No, I don't. I hear that there is a resale profit involved, but it is hearsay on my part.

Q. But as to what Mr. Wilson or Mr. Steinberg or anybody else did in connection with that you are not familiar with the details?

A. No, I am not.

Q. Could you give us approximately the amount [304] of personal property that there was in this whole transaction? A. Personal property?

Mr. Olson: What do you mean by personal property, counsel?

Q. (By Mr. Hildebrand): Well, could you put a valuation on that? I mean within a hundred thousand dollars?

A. The timber and the mill and everything?

Q. Yes.

A. Well, that depends on what you would figure

(Testimony of Fred G. Stevenot.)

the value of the timber. Before there was a sale you would have no way of determining that.

The Court: Not the timber, he is talking about the personal property. That would be the lumber, logs, machinery?

A. I understand.

Q. Do you have any idea how the values were separated at the time of the sale?

A. Yes. At the time of the sale I would say we had about \$250,000 worth of equipment, and the lumber and the logs on hand probably would run about—at the time of the sale, about seven hundred and fifty or eight hundred thousand dollars. There was roughly about a million dollars.

Mr. Hildebrand: In personal property?

A. Of course we estimated that before the lumber was graded and the logs scaled after we had taken out the \$250,000 we were allowed to deduct.

Mr. Hildebrand: I think that is all at this time, [305] Your Honor, and with that we rest.

The Court: Now then you want Mr. Stevenot to remain on the stand?

Mr. Olson: I believe so, your Honor. I intended to call Mr. Wilson, but it is immaterial in which order——

The Court: Well, it is up to you.

Mr. Olson: I will question Mr. Stevenot first.

Direct Examination

Q. (By Mr. Olson): How long have you served

(Testimony of Fred G. Stevenot.)

as a Trustee of Coastal Plywood & Timber Company, Mr. Stevenot?

A. Since November of 1951, approximately 21½ years.

Q. By whom were you appointed Trustee?

A. When?

Q. By whom were you appointed Trustee?

A. Judge Lemmon.

Q. Pardon me?

A. Judge Lemmon, in this court.

Q. Do you have any interest in Coastal Plywood & Timber Company other than in your capacity as Trustee appointed by the Court?

A. No, I do not.

Q. Have you ever had any such interest in Coastal Plywood & Timber Company?

A. No, I have not.

Q. Do you hold any claim against Coastal Plywood & Timber Company [306] or own any shares of stock in that company? A. No.

Q. You filed an affidavit in opposition to Mr. Wilson's claim for real estate commission. Are all the statements made by you in that affidavit true and correct? A. They are.

Q. Did you as Trustee sell certain timber contracts of the debtor in 1952, Mr. Stevenot?

A. Yes, I did.

Q. To whom did you sell those contracts?

A. I sold them to Clarence Nielson and his wife Aimee Nielson.

Q. And did Mr. Nielson submit a written offer

(Testimony of Fred G. Stevenot.)

to purchase these contracts? A. He did.

Q. I will show you Petitioner's Exhibit 1 introduced in evidence and ask you whether you can identify that exhibit. A. Yes, I do.

Q. Was that letter received by you?

A. Yes, it was.

Q. And does that letter contain an offer from Mr. Nielson to purchase the timber cutting contracts? A. It does.

Q. Did you present that offer to the Court for approval? A. I did.

Q. Did you present that particular offer? [307]

A. No, not this offer of the 19th. No, this was never consummated. Mr. Nielson failed to effectuate the changes in the contract. That is, I should add, with the owners of the timber.

Q. And did you subsequently receive another offer from Mr. Nielson? A. Yes, I did.

Q. I will show you what purports to be a duplicate of a letter of October 11, 1952 from Clarence L. Nielson and Aimee K. Nielson, addressed to you as Trustee. Will you look at that document and tell me whether you can identify that?

A. Yes, I can identify it.

Q. Did you receive this from Clarence L. Nielson and Aimee K. Nielson? A. I did.

Q. And does that letter constitute the subsequent offer which you received to purchase those cutting contracts? A. That is right.

Q. And did you present that offer to the Court,

(Testimony of Fred G. Stevenot.)

petitioning the Court for authority to make the sale? A. I did.

Q. And in your petition for that authority did you disclose that \$5000 was to be paid to Mr. Wilson out of the proceeds of the sale?

A. Yes sir, I did.

Q. Were you authorized by the Court to proceed with that sale [308] to Mr. and Mrs. Nielson?

A. I was.

Q. Now, when you received that offer, Mr. Stevenot, from Mr. and Mrs. Nielson, did you have any conversation with Mr. Nielson and/or Mr. Wilson?

A. Yes, I did, the day he brought it in.

Q. Where was that?

A. In my office.

Q. Would you tell us who was present at that time?

A. Well, Mr. Nielson was present and his wife and I think he had three of his children there; Mr. Wilson was present, you were present, Mr. Olson, and myself.

Q. Will you tell us what was said at this meeting and by whom?

A. Well, immediately I called his attention to the fact that his offer contained an item of \$5000 commission to be paid to Wilson, and I protested it saying that I wanted a hundred thousand net for the property, for the cutting contracts.

Mr. Nielson reacted by telling me that he would only pay a hundred thousand dollars and he insisted that \$5000 of it be paid to Mr. Wilson.

(Testimony of Fred G. Stevenot.)

We had considerable discussion over the matter and did not reach a conclusion, and Mr. Nielson left my office.

I tried at that time to get Mr. Nielson to eliminate the question of the commission and pay me the hundred thousand [309] dollars. He refused. I repeated that several times.

Q. When did you accept this offer?

A. Well, I believe it was the same day. After he left the office I consulted with you and also gave some time, some thought after lunch, and later in the afternoon, owing to the fact that—I might also add that Mr. Nielson was greatly concerned over the time element and he wanted me immediately to present it to the Court and he was not in favor, in addition, to the question of eliminating the matter of the commission. He said time was the essence of the matter and he wanted me to accept it then and there.

Mr. Olson: I will offer——

A. (Continuing): That afternoon—why, having decided that the \$95,000 was a fair price and I was confronted by the same situation that Mr. Nielson was as to the time, the contracts would run out in 1956 and we wouldn't have time to get that timber off and probably engage in a protracted lawsuit with the owners, so I decided to accept his offer in toto.

Mr. Olson: I will offer this document in evidence as Trustee's Exhibit next in order, your Honor.

(Testimony of Fred G. Stevenot.)

The Court: All right, Trustee's Exhibit next in order.

(The document referred to was marked Trustee's Exhibit B.)

Q. (By Mr. Olson): Mr. Stevenot, did you at any time tell Mr. Alex Wilson that you wanted to sell these contracts in order to raise money for the purchase of equipment? [310]

A. Oh, certainly not.

Q. Did you need money for the purchase of equipment at that time?

A. No. I had arrangements at the bank for our current needs. I had a credit of around \$600,000, I think actually \$600,000, and the purchase of equipment—all the new equipment that was purchased under sales contract, that the supplier would bring to the bank, to the Bank of America, and the bank would take them over.

I had no need for a certain sum of money to be derived from the cutting contract.

Q. During the period from July to October 1952 were you, as the Trustee, endeavoring to sell any of the other assets of the debtor? A. No.

Q. Were you endeavoring to develop a plan of reorganization of any kind?

A. Right up to the time the RFC refused to give its assent to the reorganization plan, the first plan of reorganization I was striving to effect a plan of reorganization.

Q. What type of plan were you trying to develop?

(Testimony of Fred G. Stevenot.)

A. Well, a plan that would preserve the assets of the company and include the participation of the equity holders in whatever corporation was set up.

Q. Did you at any time, Mr. Stevenot, ask or authorize Mr. [311] Wilson to sell any of the properties of the debtor? A. I did not.

Q. After these cutting contracts were sold to Mr. and Mrs. Nielson did you have any conversation with Mr. Alex Wilson?

A. Yes. He came in regularly to the office quite often, and——

Q. Was anyone else present?

A. No, invariably I was alone with Mr. Wilson.

Q. What was said by you and Mr. Wilson at these meetings?

A. Well, he was anxious to find someone to bring in—as I understood, following my instructions to him, a plan of reorganization.

Q. Was anything else said by either of you in the course of these conversations?

A. Well, I repeated undoubtedly at that moment as well, and as he often remarked, that he understood my position, and I insisted on him representing the proposers or the people who were interested in the reorganization.

Q. What if anything did Mr. Wilson say to that?

A. Well, he acknowledged that he understood it. In other words, he did not protest it.

Q. Did Mr. Wilson at any time ask you to employ him as a broker? A. No, he did not.

(Testimony of Fred G. Stevenot.)

Q. Did you at any time remind Mr. Wilson of your statements [312] with respect to commissions?

A. Oh, I repeatedly, and particularly upon receipt of these letters, as he would come in I would in a general way refer to the fact that I was not interested in the sale of the property, whenever that discussion came up.

Q. Where was that? A. In my office.

Q. Was anyone else present at that time?

A. No, I was alone in all of these meetings.

Q. And did Mr. Wilson say anything on these occasions?

A. Well, he would understand it. In other words, he would not protest it and gave me to understand that he understood.

Q. Did you invite Mr. Wilson to come to your office on these occasions he came there?

A. No, I did not. He was welcome to come to my office but I did not invite him.

Q. Now, in June of 1953, Mr. Stevenot, you filed in Court here your first plan of reorganization, did you not? A. I did.

Q. Did this plan contemplate the sale of any assets of the debtor? A. No.

Q. Was this plan ever submitted to the stockholders for a vote?

A. No, it was not. [313]

Q. Can you tell us why it was not?

A. Well, I—appreciating that I would have to have the consent—it was necessary to secure the consent of the RFC and the Bank of America I sub-

(Testimony of Fred G. Stevenot.)

mitted the first plan of reorganization to the Bank and to the RFC. The Bank evidenced some interest in going along, but I received a letter from Mr. Craven, the Administrator of the RFC, stating that they would not go along with it and notifying me that they were taking steps to foreclose.

Q. When did the RFC notify you that they were going to take steps to foreclose?

A. I believe it was on the 3rd of July the letter was dated.

Q. Did you engage in any negotiations with the RFC after that date with regard to that plan?

A. Yes, for several weeks trying to get them to change their position.

Q. When did you first determine to sell the remaining assets of the debtor, Mr. Stevenot?

A. Well, when the RFC notified me and I discussed it with them on the telephone that they had employed Mr. Clark, an Attorney in San Francisco, to prepare a petition for foreclosure, why, I realized then that there was little or no chance to reorganize the company or prepare additional plan of reorganization, and then it occurred to me that it would be necessary probably to sell the property as a unit, including the mill and the timber and all the assets.

Q. I will show you Petitioner's Exhibit 14 and ask you whether you can identify that document?

A. Yes, I do. I addressed this letter to Mr. Wilson.

Q. And did you send that letter to Mr. Wilson?

A. I did.

(Testimony of Fred G. Stevenot.)

Q. That letter, if I may refer to it for just a moment, Mr. Stevenot, states in part that you will receive and consider any proposals which he might desire to submit on behalf of his clients, and it goes on to state: "Moreover, as I have previously advised you, neither I nor Coastal Plywood & Timber Company may be obligated for any commissions payable in connection with such a plan, and any such commissions must be paid by the investors for whom you act."

Now, will you state to the Court why you sent that letter to Mr. Wilson?

A. Well, I had received a number of letters from Mr. Wilson and it occurred to me that possibly there was what I might call a build up that he was acting as my agent, from the wording of his letters, and I was concerned over it, and I went to your office and discussed it with you some days prior to the sending of this letter to him. I talked to you and to Mr. Herrington of your firm and the letter was prepared, the substance of the letter was prepared by the three of us in discussion, and I took and addressed the letter to Mr. Wilson.

Q. When was the substance of the letter prepared? [315]

A. I would say four or five days before it went out.

The Court: July 22 is the date.

Mr. Olson: Yes.

Now, does that letter, Mr. Stevenot, state any-

(Testimony of Fred G. Stevenot.)

thing which you had not previously told Mr. Wilson verbally?

A. No, it does not. I repeatedly stated the substance of this letter to Mr. Wilson for considerable time before sending this letter.

Q. Did Mr. Sterling Carr at any time tell you that he had discussed this letter with Mr. Wilson?

A. No, he did not.

Q. Did Mr. Wilson at any time acknowledge to you that he had received this letter?

A. Yes, he did.

Q. And will you state approximately when he so acknowledged it?

A. Well, I wouldn't say the date, it was shortly after the return of one of his trips after this letter.

Q. Where did that take place?

A. Pardon me?

Q. Where did that take place?

A. In my office. He acknowledged receiving it.

Q. Was anyone else present? A. No.

Q. Did Mr. Wilson object to that letter when he acknowledged [316] receipt of it?

A. He did not.

Q. Did you ever write any other letter to Mr. Wilson? A. No, I did not.

Q. You received an offer from Mr. Steinberg on behalf of J. J. Sugarman and Co. in July of 1953, is that right? A. That is right.

Q. Is this the offer which you received (Exhibiting document to the witness)?

Mr. Hildebrand: Is that the letter of July 22?

(Testimony of Fred G. Stevenot.)

Mr. Olson: July 22 to Mr. Steinberg.

A. Yes, it is.

Q. That is Exhibit 3, is it not?

A. That is what?

Q. That is marked Petitioner's Exhibit 3, is it not? A. Yes.

Q. Now, did you receive this offer before or after your letter of July 22 to Mr. Wilson had been prepared in substance?

A. No, my letter to Mr. Wilson was prepared prior to my receiving this letter.

Q. Now, when you prepared your letter to Mr. Wilson in substance, did you know that this offer was coming? A. I did not.

Q. Did you accept this offer from Mr. Steinberg? A. No; I did not. [317]

Q. Did you have any conversation with Mr. Alex Wilson after you received this offer?

A. Yes, I believe on the same day I received it he came into my office.

Q. Anyone else present?

A. No, just Mr. Wilson and myself.

Q. And what was said and by whom at this meeting?

A. Well, we had a general discussion and I recall that as I always did, I never failed to remind him that I was not paying a commission, he was not representing me, and at that time he told me that he had brought the name of Sugarman to Mr. Steinberg and that Mr. Steinberg was going to take care of him.

(Testimony of Fred G. Stevenot.)

Q. Did he indicate in what manner?

A. No, he didn't. He just said that he brought it and Mr. Steinberg—that they had discussed some arrangement. I don't recall that he told me the exact figures or just the nature of the agreement, except that he was looking to—I gathered and understood that he was looking to Mr. Steinberg for his compensation.

Q. Did you receive any other offer of any kind from Mr. Steinberg?

A. No. This is the only one I received.

Q. Did you furnish any financial statements or other information concerning the debtor to Mr. Wilson?

A. Oh yes, like I did all others, I furnished at the request [318] of people interested for two previous years, supplied them with information, maps and reports.

Q. Now, to whom did you as Trustee eventually sell the assets of the debtor, Mr. Stevenot?

A. I sold them to Sugarman Lumber Company.

Q. And do you recall when you first entered into negotiations with Sugarman Lumber Company?

A. Well, I think probably it was—oh, some time in October, I believe.

Q. Of what year? A. 1953.

Q. And how long did these negotiations continue? A. For several weeks.

Q. Did Mr. Alex Wilson participate in these negotiations? A. He did not.

(Testimony of Fred G. Stevenot.)

Q. Did Mr. Steinberg participate in those negotiations? A. He did not.

Q. I will show you a set of four documents, Mr. Stevenot, purporting to be signed by officers of Sugarman Lumber Company, dated December 12, 1953, December 14, 1953, January 11, 1954, and February 1, 1954. Can you identify those documents?

A. Yes; those are the offers to purchase that came from the Sugarman Lumber Company after negotiations with Mr. Nate Sugarman and Mr. Barney Margolis.

Q. Did they constitute the offer that you received from [319] Sugarman Lumber Company to buy the assets?

A. To make up the second plan of reorganization.

Q. Was this offer included as a part of your second plan of reorganization that you filed with this Court? A. Yes.

Q. And do those letters set forth the terms of the sale of assets to Sugarman Lumber Company in your plan? A. Yes, that is right.

Mr. Olson: I will offer those in evidence, your Honor as Trustee's next in order.

The Court: Do you want them marked as one exhibit?

Mr. Olson: I believe so. They constitute one exhibit.

The Court: They will be admitted as Trustee's Exhibit C.

(Testimony of Fred G. Stevenot.)

(The documents referred to were marked Trustee's Exhibit C.)

Q. (By Mr. Olson): Mr. Stevenot, did you at any time authorize Mr. Alex E. Wilson to represent or act for you in any capacity?

A. No, I did not.

Q. Did you at any time authorize him to represent or act for the debtor in any capacity?

A. No.

Q. Did you at any time authorize or request Mr. Wilson to sell any assets of the debtor? Did you hear me? My question was, did you——

A. Well, you are not including the cutting contracts? [320]

Q. Pardon me—yes, I am asking you if you at any time authorized or requested Mr. Wilson to sell any of the assets of Coastal Plywood Timber Co.?

A. I say you are including the cutting contracts?

Q. I am including the cutting contracts.

A. No, I did not.

Q. Did you at any time authorize Mr. Sterling Carr to employ Mr. Wilson or any other broker to sell any of the assets of the debtor?

A. No, I certainly did not.

Q. Did you at any time authorize Mr. Carr to request Mr. Wilson or any other broker to sell any assets of the debtor? A. No.

Q. Did Mr. Carr at any time advise you that he had spoken to Mr. Wilson with regard to the sale of any assets of the debtor?

A. No, not that I recall.

(Testimony of Fred G. Stevenot.)

Q. Did Mr. Wilson at any time advise you that he had spoken to Mr. Carr or anyone else with regard to selling assets of the debtor?

A. Well, the only reference, he came to see me one day and he said that he had talked with Mr. Carr about Coastal and the sale of the assets, and Mr. Carr, according to Mr. Wilson's statement, had told him, "You have to see Mr. Stevenot."

Q. Was this in reference to the cutting contracts? A. No, this was later on. [321]

Q. Did Mr. Wilson at any time advise you that Mr. Sterling Carr had made any statement to him that Mr. Wilson would be paid any compensation by the debtor? A. No, he did not.

Q. Did you at any time state to Mr. Wilson that you or the debtor would pay him a commission or any other compensation in connection with selling the assets of the company to Sugarman Lumber Company? A. No, I did not.

Q. Now, did Mr. Wilson at any time prior to the close of the sale to Sugarman Lumber Company state to you that he expected to receive a commission from the debtor? A. No, he did not.

Q. When did he first indicate to you that he expected to receive compensation from the debtor?

A. Well, in the latter part of May, I think about May the 20th, I was having lunch at the Clift Hotel and Mr. Wilson approached my table to tell me he had decided—probably before that—just strike that.

Will you repeat the question again?

Q. Yes. The question was this: When did Mr.

(Testimony of Fred G. Stevenot.)

Wilson first indicate to you that he expected to receive compensation from the debtor?

A. Well, I was true in my statement; on the 20th of May.

Q. (By the Court): Of what year? [322]

Mr. Olson: And when was this?

A. In 1954. I was having lunch at the Clift Hotel and he approached my table to tell me that he had discussed with his attorney the matter of his having the right to claim a commission on the sale of the assets of the debtor company to Sugarman Lumber Company, and immediately I asked him, "This in spite of the fact I have repeatedly told you that neither I nor the debtor company would pay you a commission, and that I had put you on written notice?"

He said, "Oh yes, I will acknowledge all of that, but in a matter of a reorganization where the Trustee is concerned there are cases that permit me to appeal to the Court for compensation."

Q. Was anyone else present?

A. My Secretary, Miss Christenson was present.

Q. Prior to the conversation of May 20th did you have any indication from any source whatsoever that Mr. Wilson expected to recover compensation from the debtor? A. No.

Q. Do you recall a court hearing before the United States District Judge Murphy in San Francisco on April 13, 14 and 15 of this year?

A. Yes, I do.

Q. That involved a petition to set aside the order

(Testimony of Fred G. Stevenot.)

confirming the second plan of reorganization, did it not? [323] A. Yes.

Q. Did you have any conversation with Mr. Alex Wilson at this hearing?

A. Yes; in the closing days—I think the case ran about three days, and it was toward the end, probably the last day, I am not sure of that, at a recess, why, Mr. Wilson approached me and he was greatly dejected, and I assumed it was because of the fact that Mr. Steinberg had been a party to the question of setting aside the second plan of reorganization and substituting a new plan, and Mr. Wilson, as I recall, stated to me, “Where does this leave me?” And, in words to that effect, “This washes me out.” He had no claim—his claim against Steinberg would be valueless unless Steinberg could preserve his connection with the Sugarman.

And then he asked me if I could learn just what Steinberg was getting out of this from the Sugarman, and I told him I would try.

So I walked over to Mr. Dicker, attorney for the Sugarman people, and asked him and he told me that there was nothing definite with Steinberg, but they had figured in a general way, an understanding with Mr. Steinberg, that they would pay him a finder’s fee based upon a percentage of their profits growing out of this transaction.

I came back and reported that to Mr. Wilson.

Q. Was anyone else present during this conversation with Mr. [324] Wilson?

(Testimony of Fred G. Stevenot.)

A. Well, there were people in the court room, but they were not close by.

Q. Anyone in hearing distance to your knowledge? A. No, no.

Q. Now, when you presented your second plan of reorganization to the Court, Mr. Stevenot, did you advise the Court, either in that plan at any of the hearings or in any other way that a commission might be payable on the sale to the Sugarman Lumber Company contemplated on that plan?

A. No, I did not.

Q. And in any of your negotiations with stockholders or meetings with stockholders and creditors in connection with their vote on the plan did you at any time indicate to them that such a commission might be payable?

A. No. There was no necessity.

Q. Why do you say there was no necessity?

A. Well, in the first place I had repeatedly instructed Mr. Wilson, I had written to him, and he made no demand on me and did not suggest in any way that he was entitled to one and he knew that a plan was being formulated to be presented to the Court.

Q. To your knowledge prior to the filing of Mr. Wilson's petition that we are now hearing did anyone ever indicate to the Court or to the creditors or stockholders that a commission [325] or other compensation might be payable on the sale to the Sugarman Lumber Company?

A. No, not that I know of.

(Testimony of Fred G. Stevenot.)

Mr. Olson: I don't believe I have any further question, your Honor.

The Court: All right. Do you have any cross examination at this time?

Mr. Hildebrand: Just a little, your Honor.

The Court: All right.

Cross Examination

Q. (By Mr. Hildebrand): Mr. Stevenot, in this conversation at the Clift Hotel that you testified to with Mr. Wilson, did he discuss with you at that time this letter that you wrote him on the same day that the Sugarman proposal was first submitted?

A. No; the only reference he made to the letter is when I told him that I had informed him personally, repeatedly and that I had written him to the effect that I would not pay a commission, the debtor corporation would not pay a commission, he said, "I will acknowledge all of that."

Q. And did he say at the same time that he didn't think under the circumstances that you had any right to write him that sort of a letter?

A. Well, there was no discussion about the letter. It was a fact that had already been accomplished when he told me he had engaged his attorneys to prepare a claim and he was going to [326] press it against the debtor company.

Q. Didn't he also tell you as he earlier testified here in court, didn't he say to you, "I pulled you out of a terrible hole and all the rest of you, and I sold

(Testimony of Fred G. Stevenot.)

the property for you," and he said, "You didn't have any right to say that you wouldn't pay me because," he said, "As I understand it it is up to the Court and I think you should have paid me. Mr. Carr told you that you should pay me, but you won't do it, so I will just have to sue you. I hate to do it, Mr. Stevenot, I have learned to be very fond of you, but if I must go to Court for justice I will have to do it."

Didn't he make that statement to you at the Clift Hotel?

A. No, sir; he made no such statement to that effect.

Q. Or words to that effect?

A. No, he excused himself that there were cases in the law that would permit him to file a claim, and he engaged attorneys.

Q. Now, you say you haven't had any advices from Mr. Carr at all. Mr. Carr did tell you, didn't he, that you should pay Mr. Wilson in this matter?

Mr. Olson: Same objection, your Honor. It has no relevancy.

Mr. Hildebrand: It is in connection with this conversation, your Honor.

Mr. Olson: He wasn't present at this conversation, your Honor.

Mr. Hildebrand: No, but isn't the fact that Mr. Carr did [327] tell you that you should pay Mr. Wilson?

The Court: When?

A. When?

(Testimony of Fred G. Stevenot.)

Mr. Olson: When?

The Court: What time are you talking about?

Mr. Hildebrand: Well, prior to this conversation with Mr. Wilson at the Clift Hotel.

A. I will answer that, no, he did not.

Q. And hasn't he told you repeatedly that you should pay Mr. Wilson?

Mr. Olson: Again, when?

A. Same situation.

Q. (By Mr. Hildebrand): You deny that you ever discussed this matter with Mr. Carr or have ever been advised by him at any time?

The Court: You are talking now about prior to the Clift Hotel conversation?

Mr. Hildebrand: Prior to the Clift Hotel conversation.

The Court: All right, I will allow him to answer.

Prior to the Clift Hotel conversation did you ever discuss the matter with Mr. Carr?

A. No, I did not.

Q. (By Mr. Hildebrand): You are in disagreement with Mr. Carr at the present time in regard to this matter, aren't you?

Mr. Dudley: I object to that as calling for a conclusion [328] of the witness.

Mr. Olson: Objected to as incompetent, irrelevant and immaterial.

The Court: I don't see how it is relevant.

Mr. Hildebrand: All right.

Q. What would the effect of the foreclosure have

(Testimony of Fred G. Stevenot.)

been if the RFC had foreclosed this property and it had been sold at public auction?

Mr. Dudley: I object to that as calling for a conclusion of the witness. He is not qualified to answer.

The Court: Well, I think he would be qualified. That is, he is not telling us the legal effect.

Mr. Hildebrand: No.

The Court: The effect on the company.

Mr. Hildebrand: That is right.

Q. What did they have a mortgage on the trustee for, the RFC? A. The RFC?

Q. Yes.

A. About a million eight hundred thousand dollars.

Q. On what?

The Court: On what?

A. On the whole company.

Q. (By Mr. Hildebrand): That was on the Garcia property, wasn't it?

A. Well, the mill and everything. [329]

Q. On the whole thing?

A. The whole thing.

Q. And if they had foreclosed then there would have been nothing left for the stockholders?

A. That I don't know. There was no foreclosure, it was never carried out; it is just a supposition or guess. I would fear to submit it to public auction on foreclosure.

Q. Now, so far as Mr. Steinberg's activities were concerned, anything he was to get out of the

(Testimony of Fred G. Stevenot.)

deal, he was only to be paid any profit that these Sugarman people made by the resale of the business, isn't that correct?

A. Well, I don't know that to be true, but Mr. Dicker told me that they had their conversations and they were proposing that Mr. Steinberg accept some arrangement to pay out of the profits and Mr. Steinberg refused to do it, according to Mr. Dicker.

Q. Anyhow, whatever Mr. Steinberg was claiming, so far as you know, the claim that he made, was merely out of any profits they would make from the resale, wasn't it?

A. I don't know that.

Q. So that if he promised Mr. Wilson anything in connection with anything he might get from profits from the resale, that would have nothing to do with the sale of the property for \$4,352,000?

The Court: Doesn't that speak for itself?

Mr. Hildebrand: Yes. [330]

The Court: Mr. Stevenot doesn't have to answer that.

Q. (By Mr. Hildebrand): Now, let's see if we are in agreement on one thing: Without Mr. Wilson or his activities the contacts would not have been made which sold the property, is that right?

A. I can't say that, no.

Q. Well, who?

A. The Sugarman Lumber Company and the J. J. Sugarman Company were active in that sort of work. They may have come forward, I don't know. I can't say that they wouldn't—

(Testimony of Fred G. Stevenot.)

Q. Well, the only people that you knew——

A. I welcomed everything Mr. Wilson did and Mr. Steinberg did, but not at the expense of the stockholders.

Q. But Mr. Wilson and Mr. Steinberg were the people that brought the Sugarmans to you, weren't they? A. I am telling you, I don't deny that.

Mr. Hildebrand: That is all.

The Court: Any further questions?

Mr. Olson: I have no further questions.

The Court: All right, then, Mr. Stevenot, will you step down.

Mr. Olson: At this time I would like to recall Mr. Wilson, your Honor.

The Court: All right, will you step forward. You have already been sworn, Mr. Wilson. [331]

ALEX E. WILSON

recalled by the Trustee, previously sworn.

The Court: Are you calling him as an adverse witness?

Mr. Olson: Adverse witness, your Honor.

Direct Examination

Q. (By Mr. Olson): Mr. Wilson, when Mr. Nielson, Clarence Nielson, submitted his offer of August 19, 1952 to purchase the timber cutting contracts from the Trustee, at that time you had an agreement with Mr. Nielson, did you not, under which you would receive certain sums from Mr.

(Testimony of Alex E. Wilson.)

Nielson on the resale of the timber covered by those contracts? A. Yes, sir.

Q. Will you state how much compensation you were to receive?

A. After I sold the property for Mr. Stevenot to Mr. Nielson and got paid for that, Mr. Nielson said, "I am buying this property only to resell it, Alec, and you think it is such a good piece of property I want you to resell it for me. I will give you a contract to resell it for me."

He started the contract this way: He said, "If you will sell it for \$6 a thousand I will give you 25 cents a thousand. If you sell it for \$7 I will give you 50 cents a thousand. If you sell it for \$8 I will give you 75 cents a thousand. If you sell it for \$1.00 or over—or \$9.00 or over \$9 a thousand I will give you \$1.00 a thousand."

Mr. Nielson signed the contract with me to that effect. [332]

Q. What is the date of that contract, can you tell us?

A. I don't know what the date of it is. I made that down at Mr. Nielson's house in Santa Cruz. I haven't the contract with me.

Q. It is in August of 1952, though, is it not?

A. I don't know. It is somewhere in there.

The Court: Somewhere in that period of time?

A. Yes, sir; I believe so. I have a copy of it, but inadvertently I didn't bring it with me. I didn't know it would be necessary.

That contract, of course, Mr. Olson, and the pay-

(Testimony of Alex E. Wilson.)

ment I was to receive under that contract was for additional performance, that is, additional sales, or a reselling of the property for him if and when I could do so.

Q. You were to receive this compensation or payment, were you not, whether or not you were the one who resold the timber?

A. Oh, I always do that in my contracts, with all my timber contracts I make it no matter who sells it that I receive the compensation. I do that because I have learned from long experience that if I don't have it tied up exclusively John Jones takes it away from me or someone else, so I make it exclusively when I do business that way.

Q. Did you not recite in that contract that this payment was to be made to you even though you did not resell the timber for Mr. Nielson because you had found these contracts for Mr. [333] Nielson?

A. Yes, that is true. I had purchased them for him.

Q. Do you still contend that you were not acting for Mr. Nielson in connection with that purchase?

A. Why of course I wasn't acting for Mr. Nielson. You know that, Mr. Olson.

Q. Of course you were not?

A. Why, of course I was not acting for him. I was acting for Mr. Nielson if I sold them again for him. I haven't sold them again for him and I have received nothing therefor. The contracts have been sold, I tried to sell them to about 30 people, and

(Testimony of Alex E. Wilson.)

the contracts were so bad, because you had to get the timber off by '56, 67,000,000 feet. Impossible. The rights-of-way were not available and you had to clear the land. So Mr. Nielson sold those contracts, Mr. Olson. He was in a hundred thousand dollars, so he sold them for \$160,000. He sold them to Mr. Buckley of Santa Rosa, and of course that isn't anywhere near \$6 a thousand. It is probably worth two or three dollars a thousand. So if you feel I received compensation, for your information I received not one dollar.

Q. But you admit that this contract with Mr. Nielson provided that you were to receive a compensation under the scale you have given us even though the timber was not resold through your efforts?

A. All my contracts are that way, Mr. Olson.

The Court: Well, it was an exclusive contract?

A. That is right, sir, yes, your Honor, it was an exclusive contract.

Q. Just like an exclusive real estate contract?

A. Yes, your Honor.

Q. (By Mr. Olson): But you further admit that the contract expressly provided that you were to receive this even though you did not resell this timber for him because you had found these timber cutting contracts for Mr. Nielson?

A. Oh, no, not on that basis, Mr. Olson. I worked day and night on the Nielson contracts and if anybody could have sold them I could. That was for my work. Now, if Mr. Buckley wanted to sell

(Testimony of Alex E. Wilson.)

them again I would work for him and do so, but he would have to pay me. That would be another deal. I don't make just one deal and sell it a thousand times, you know. I make one deal like you do, you get a lawsuit and you get paid and you get another lawsuit. I can't sell it 15 times for one fee.

Q. (By Mr. Olson): Do you deny, Mr. Wilson, that this contract with Mr. Nielson expressly recites that you are to receive this amount even though the contracts are not sold through you because you brought these contracts to Mr. Nielson?

A. Oh, no, that is not the thought there at all. I am to be paid only when——

The Court: Does it state that? [335]

Mr. Olson: You say it does not state that?

A. No, I don't think it did. I wrote the contract down in Santa Cruz rapidly, but I don't believe it said that.

Mr. Olson: Well, we will let the contract speak for itself, your Honor. The Petitioner has agreed to produce that. I just have one further question.

Q. Mr. Wilson, you were educated in the field of law, were you not? A. What?

Q. You were educated in the field of law, were you not?

A. I didn't take the Bar, I went to the first war and didn't take my examination .

The Court: But you were educated, you went to school, law school? A. Yes, sir.

Mr. Hildebrand: We were classmates.

(Testimony of Alex E. Wilson.)

A. University of California, yes.

The Court: How long did you go to law school?

A. Just for two years, sir.

Q. (By Mr. Olson): You are familiar are you not with the real estate laws and restrictions of the State of California? A. Yes, I know them.

Q. Have you ever sold any timber for anyone, Mr. Wilson, without a written contract?

A. Yes. [336]

Q. Have you recovered a commission on any such sale?

A. Yes, sir. I sold almost a million dollars worth of timber to Bercut-Richards Cannery here in Sacramento for Dant and Russell without a scratch of a pen, and Tom Richards paid me, I think about \$87,000. I didn't have a scratch of the pen with Mr. Richards of Bercut-Richards, neither did I have a scratch of the pen with Dant & Russell.

Q. But as you testified previously, you admit knowing and have known for a great many years that a written contract is essential for the recovery of a commission under the California law?

A. In California real estate I know that.

Mr. Olson: I have no further questions.

The Court: Any further questions?

Mr. Hildebrand: No, your Honor.

The Court: All right, will you step down, please, Mr. Wilson.

Mr. Olson: I assume that—I want to make this clear—that counsel will produce the agreement con-

cerning which Mr. Wilson has testified, and may that go in evidence as Trustee's Exhibit next in order.

Mr. McMurchie: Yes, assuming he can find it. I can't guarantee it is there. If it is there it will be produced.

Mr. Olson: My only other alternative, your Honor, is to subpoena Mr. Nielson and obtain his copy of the agreement.

Mr. Hildebrand: He says it is there, and we will produce [337] it.

Mr. Wilson: I have it at home, sir, and it is in my file. I just didn't bring that file.

The Court: Well, it will be produced, then, or at least some sort of authenticated copy.

Mr. Olson: It is not necessary as far as I am concerned that it be the original, and may it be understood that that be introduced as Trustee's next in order?

The Court: You have no objection to that coming in?

Mr. Hildebrand: No, your Honor.

The Court: We will reserve an exhibit number for that, Mr. Clerk. You are not charged with keeping it, but we will reserve the next exhibit number in order, which is what?

The Clerk: D.

The Court: Then the Trustee's Exhibit D, which is to be produced by Mr. Wilson, is the Nielson contract with Wilson.

Mr. Olson: The Trustee rests, your Honor.

The Court: Any rebuttal?

Mr. Hildebrand: No, your Honor.

(Thereupon after discussion between Court and counsel the case was ordered to be submitted on briefs 15, 15 and 10.) [338]

[Endorsed]: Filed Aug. 17, 1954.

[Endorsed]: No. 15583. United States Court of Appeals for the Ninth Circuit. Alex E. Wilson, Appellant, vs. Fred G. Stevenot, Trustee of Coastal Plywood & Timber Co., debtor, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Northern Division.

Filed: June 3, 1957.

Docketed: June 14, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In The United States Court of Appeals
For The Ninth Circuit

No. 15583

In the Matter of
COASTAL PLYWOOD & TIMBER COMPANY,
a corporation, Debtor.

In Proceedings for the Reorganization of a corporation.

Re: Claim of Alex E. Wilson.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY ON
APPEAL AND DESIGNATION OF RECORD ON APPEAL

Appellant hereby adopts as his statement of points under Rule 17(6), the Statement of Points Upon Which Appellant Intends to Rely On Appeal filed in the District Court on May 14, 1957, and appearing in the typewritten transcript of record.

Appellant hereby adopts as his designation of record under Rule 17(6), the Designation of Record on Appeal filed in the District Court, on May 14, 1957, and appearing in the typewritten transcript of record.

Dated: June 13, 1957.

FILES & McMURCHIE,
/s/ By DONALD W. McMURCHIE,
Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed June 14, 1957. Paul P.
O'Brien, Clerk.

